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COPYRIGHT ROYALTY TRIBUNAL

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In the Matter of: :

CABLE COPYRIGHT ROYALTY :

DISTRIBUTION PHASE II : CRT 85-4-84CD

REBUTTAL :

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(This volume contains page 1280 through 1436)

2033 K Street, Northwest
5th Floor
Washington, D. C.

Wednesday, December 3, 1986

The hearing in the above-entitled matter was
reconvened at 10:00 a.m., pursuant to adjournment.

BEFORE:

J. C. ARGETSINGER	Chairman
EDWARD W. RAY	Commissioner
MARIO F. AGUERO	Commissioner
ROBERT CASSLER	General Counsel

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>VOIR DIRE</u>
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EXHIBITS

IDENT

MM No. 8X	MPAA Vwg. Hrs. Station Data	1296
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MM No. 9X	MM Specials re: MPAA Study	1313
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MM No. 10X	Behind the Scenes Data	1315
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MM No. 11X	Chet Atkins Data	1315
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P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN ARGETSINGER: Mr. Lane, your witness --

MR. LANE: He's available for cross.

Whereupon,

ALLEN R. COOPER

having been called as a witness and previously sworn, was examined and testified as follows:

CHAIRMAN ARGETSINGER: Mr. Lutzker -- Mr.

Stewart, had you finished up?

MR. STEWART: I finished my cross with respect to everything except for Exhibit II-8X which we postponed introducing until after Mr. Halperin reviews the printouts further, which he is doing as we speak.

CHAIRMAN ARGETSINGER: Very good.

Mr. Lutzker.

MR. LUTZKER: Thank you, Mr. Chairman.

CROSS-EXAMINATION

BY MR. LUTZKER:

Q Good morning. Page one of your testimony you comment that Multimedia's case and NAB's case are devoid of any useful information. That is in your opinion, it is devoid of any useful information, is that correct?

A That is my opinion, my testimony.

Q In fact, it has been your opinion in every

1 Phase II proceeding since 1979, that the Multimedia and
2 NAB case have been devoid of this useful information, is
3 that not correct?

4 A That's absolutely correct.

5 Q The CRT has never embraced that analysis though,
6 have they?

7 A I think the CRT has been critical of the testi-
8 mony presented by NAB and Multimedia in the past proceed-
9 ings.

10 Q But have not the rulings of the CRT in 1979,
11 1980, 1981, 1982, 1983 rejected your analysis that there
12 is no useful information in these cases, and has granted
13 awards in excess of what you have recommended?

14 A I agree with the latter part of your statement
15 that they have granted awards larger than we had proposed.
16 I don't know know that they have embraced your presenta-
17 tions.

18 Q Well, have not these cases been appealed to the
19 Court of Appeals, and specifically with respect to Multi-
20 media's presentations, did not MPAA appeal in 1979, and
21 1982, and were not those decisions affirmed by the Court?

22 A Yes, they were, because I certainly think it is
23 in the discretion of the Tribunal to accept, reject and
24 interpret the evidence as they see fit.

25 Q I guess to para-phrase one of the songs of the

1 sixties, "How many rulings will it take for you and MPAA
2 to know that we have spent too much time to rehash these
3 issues"?

4 A Mr. Lutzker, we will continue to object to a
5 claim in excess of what we think Multimedia or broadcasters
6 are entitled to. And we hope that someday the Tribunal
7 will provide very sound guidelines as to the basis for
8 their awards.

9 Q I guess that the other parties felt it may have
10 already been done, but let's proceed. You acknowledge
11 that Multimedia's case is virtually identical from year
12 to year. Would you now itemize in your opinion, what are
13 the differences between Multimedia's case in 1983 and 1984?

14 A The principal difference that I can recall
15 right now, Mr. Lutzker, is the exhibit that Mr. Thrall
16 will sponsor and testify to, with respect to the Nielsen
17 ROSP data concerning viewing in DMAs and viewing outside
18 DMAs.

19 There is one other exhibit that uses similar
20 data -- there are two exhibits in Mr. Thrall's testimony
21 that use the ROSP data for in DMA and out DMA which were
22 not presented in prior proceedings by Multimedia.

23 Q That material is presented in rebuttal to your
24 case. I am asking what is different with Multimedia's
25 case in --

1 A In your direct case?

2 Q Yes.

3 A I am not aware of any difference.

4 Q So you wouldn't see any difference between the
5 1983 case and the 1984 case?

6 A I do not.

7 Q Yesterday you amended Exhibit R-1 to make what
8 I guess you characterize as a minor correction on viewing
9 hours for Young People's Specials, it amounted to a differ-
10 ence of about 9-10,000 viewing hours. And in response to
11 one of the Commissioners, in terms of how does this effect
12 other things, you said it was deminimis, it didn't have
13 any value.

14 What is a significant number of viewing hours?

15 A What is a significant --

16 Q What is a significant number?

17 A You are dealing in the range of 2 billion for
18 the MPAA represented claimants, in my view, a significant
19 number -- less than 500,000 is really of minimal importance.

20 Q Do percentages make a difference, I mean, if
21 something increases 75 percent, is that fact, in and of
22 itself, of relevance?

23 A I don't know what you are referring to. It
24 depends upon --

25 Q If viewing hours in a particular context increases

1 75 percent, would you consider that a significant --

2 A It depends upon the basis that you are dealing
3 with. I think that if I dealt with a large base, the
4 difference would be more significant than if I am dealing
5 with a small base. But in any event, it is a relative
6 number and it relates to the particular figures you are
7 dealing with, Mr. Lutzker.

8 Q So, if a percent went -- if you had viewing
9 hours of 10,000 in one year and they went up to 20,000
10 the next year, which would be 100 percent increase, you
11 wouldn't consider that significant?

12 A I don't consider that, per se, significant in
13 terms of the awards situation. I mean, I was referring
14 particularly to differences such as have been testified
15 to in this proceeding, that a rating of three and a rating
16 of four is a difference of 33 percent, and I don't find
17 that particularly exciting.

18 Q The half million viewing hours that you mentioned,
19 do you know what percentage of your viewing study that
20 amounts to?

21 A Well, we are dealing with 2 billion, a half
22 million would be -- what is that -- one million would be
23 one-half of one percent, so that is a quarter of one per-
24 cent.

25 Q I know this particular thing is old ground that

1 we have gone over, but I just wanted for purposes of
2 getting at the other exhibits, to have you confirm. In
3 the past we have tried to deal with the precision with
4 which the Nielsen Study, or the MPAA Study is devised.
5 Does it have the capability of being that particular, in
6 terms of the percentage that you just stated, the accuracy
7 of the data that you are working with, is it accurate to
8 that percent?

9 A Well, I am confident that the accuracy of the
10 Nielsen data is sufficient for the purposes for which it
11 is used, which is primarily for the distribution of cable
12 copyright royalties among copyright owners.

13 Q Who agree with your presentation?

14 A Excuse me, who agree with my presentation? Yes,
15 I think I will accept that.

16 Q And of course, you incorporate more than just
17 Nielsen data in your study, and you also do not rely upon
18 the total universe of the Nielsen data in making the
19 final determinations in the sweep weeks?

20 A I don't understand your question.

21 Q You say the Nielsen data -- you use Nielsen ROSP
22 data --

23 A Pardon me?

24 Q You use the Nielsen ROSP data.

25 A No, what I was referring to, Mr. Lutzker, was

1 the special Nielsen studies commissioned by the MPAA. We
2 do not rely upon Nielsen ROSP data for a whole variety of
3 reasons, primarily because the Nielsen ROSP data relate
4 to broadcasting, and not to distant signal retransmission
5 by cable systems, which is really the basis for the
6 Tribunal's decisions.

7 Q Let me turn to Exhibit R-1, do you have that?

8 A (Perusing documents) Yes, sir.

9 Q How was this document prepared, did you prepare
10 it?

11 A I prepared it, yes, sir.

12 Q How did you go about preparing it?

13 A I prepared it by going through all of the titles
14 that were in your original claim, that you had presented;
15 secondly, all the information we had from BIB and other
16 sources regarding Multimedia programs. We then related
17 the Nielsen data which lists the programs by title, with
18 the information we had which attributed programs to Multi-
19 media and selected these numbers from Nielsen study data.

20 Q Be a little more specific in terms of the docu-
21 ments that you looked at, you refer generally to Nielsen
22 data. And yesterday there was some discussion of a
23 document that Mr. Halperin was looking at this morning.
24 Is that the document that was discussed yesterday, that
25 you looked at, or are there other documents that you

1 reviewed?

2 A The document that was discussed yesterday, as
3 I recall, was a Phase I report. And that Phase I report
4 is insufficient for the determination of the distribution,
5 primarily because it does not contain information identify-
6 ing specific movie titles. The identification of movie
7 titles is done separately by Cable Data Corporation,
8 and relating those to listings for movies, and movie
9 series broadcast by the sample stations.

10 So the Phase I report does not show movie titles.

11 Q But for Multimedia programming that would show
12 up in that Phase I report?

13 A It would show up in the Phase I report.

14 Q All the programs would show up in there?

15 A I believe that all of the programs would show
16 up in the Phase I report, yes.

17 Q In general terms, what information is contained
18 in that Phase I report?

19 A The Phase I report is a report by sample stations
20 showing -- which lists the titles of all programs broad-
21 cast by those stations during the measurement period,
22 during the hours covered by the Nielsen diaries. It
23 lists the title of the program, it has the categorization
24 as syndicated series, local, movies, devotional as deter-
25 mined by Nielsen. It then shows the hours of broadcast a

1 day and hours of broadcast, and it shows the -- for each
2 period, and then it has a total figure of the household
3 viewing hours during all the measurement periods combined.

4 Q And is that the only document that you have
5 looked at in developing this list, or was there another
6 document that you looked at?

7 A I would look at another document which was
8 prepared also by Cable Data Corporation, by the identified
9 distributor, or claimant for programs. This is what we
10 would refer to as a Phase II report, and this is a totally
11 confidential report.

12 Q And what is contained, in general terms, in that
13 report?

14 A It would be data similar to that contained in
15 the Phase I report, except it is now organized not by
16 station, but by the claimant's name.

17 Q And that also contains movie data?

18 A Yes.

19 Q Would that be the only difference between those
20 two reports?

21 A Well, the only additional data that would be
22 in there, that is not contained in the Phase I, aside from
23 the total reorganization of the report, would be the
24 movie figures, title by title.

25 Q Does the first report you referred to have at

1 the end a viewing hour total for each program on a station-
2 by-station basis?

3 A I have already testified to that, yes.

4 Q And if there is no entry, does that mean that
5 there is zero viewing?

6 A I don't know whether it says zero, or whether
7 there is no entry. I don't think that it would particularly
8 make any difference whether it has a zero, or just was
9 a blank. I don't recall.

10 Q Is this the sum total of the material that you
11 would have looked at in preparing Exhibit R-1? Is there
12 any other material you would have reviewed?

13 A I told you, in addition to the Nielsen Special
14 Study report, we looked also at the claims, BIB data for
15 identification of owners, and other sources of information,
16 that Ms. Kessler has testified to before.

17 Q Yesterday you made the one correction on Young
18 People's Special, is there any other corrections to this
19 R-1?

20 A Not that I am aware of; Mr. Lutzker.

21 COMMISSIONER AGUERO: Mr. Cooper, the Young
22 People's Special, 43954 and 34326.

23 THE WITNESS: Pardon me, sir.

24 That number should be changed to 34,326.

25 COMMISSIONER AGUERO: What about the -- you have

1 to deduct how much from 6385821 -- you have to deduct
2 how much there?

3 THE WITNESS: I would deduct 9,629.

4 COMMISSIONER AGUERO: 28 or 29? How much would
5 be the total?

6 THE WITNESS: The deduction is 9,629, which is
7 as I testified yesterday, was de minimis, and has really
8 no impact upon any of the percentage or any of the other
9 figures shown.

10 BY MR. LUTZKER:

11 Q The reference to the six cycles, the figures
12 at the top, again there are the primary four sweeps for
13 which all the stations in the sample are measured, and
14 then there are two additional sweeps in these years. How
15 many markets were measured?

16 A How many markets were measured?

17 Q You had 100 stations --

18 A 103 stations, I don't know the precise number,
19 I think we may have testified to that, probably around
20 75 or 80 of those are measured during six cycles and the
21 balance during either four or five cycles.

22 Q Is that done on -- the markets that are identi-
23 fied, are they in numerical listing, in the Top 50 markets,
24 or are they scattered around, for the partial sweeps?

25 A For the partial sweeps, the partial sweeps are

1 generally in smaller markets.

2 Q In smaller markets?

3 A Smaller markets, than the ones that are covered
4 in six weeks.

5 Q The New York and Los Angeles would not be in-
6 cluded?

7 A In what?

8 Q The partial sweeps?

9 A Is New York a smaller market?

10 Q So you are saying it would not be included in
11 the partial sweeps?

12 A How can you come to that conclusion? I said
13 the ones which are not included in the partial sweeps
14 are the smaller markets.

15 Q Okay, I misheard you, Allen. The item for
16 America Comes Alive, do you know how that 21,000 figure
17 was arrived at?

18 A Yes, we used the special Nielsen study data,
19 we used the titles which are identified as America Comes
20 Alive, and that is how that total came about. I must
21 say from the testimony that came out subsequently, the
22 America Comes Alive apparently is an omnibus type series
23 that includes various specials. And among the individual
24 programs listed in R-1 are programs which may have been
25 also part of the America Comes Alive series.

1 I refer, for example, to The Double Platinum,
2 which I believe was one of the programs subsequently
3 identified as being in the America Comes Alive series.
4 Well, we have the total of those programs which were
5 clearly identified for America Comes Alive by the Nielsen
6 title, and we have added every other program that Multi-
7 media has claimed, or that we could attribute to Multi-
8 media on this list.

9 Q But the question was how was it derived, and you
10 looked at the CDC, -- the Phase I or the Phase II documents
11 that you referred to?

12 A Yes, of course.

13 Q And the same would be true for the programs
14 like New Faces, and the Wembly Festival?

15 A Yes, sir.

16 Q All of the shows in that list. Allen, in the
17 context of discovery, we obtained the printouts which
18 I gather from what you are saying, were the second, this
19 Phase II list identified by claimants, the CDC prepared
20 list, and I made copies of portions of it, but I just
21 want to ask you a couple of questions about this.

22 CHAIRMAN ARGETSINGER: Are you introducing this
23 as an exhibit?

24 MR. LUTZKER: Yes, give it R-1X.

25 MR. LANE: Don't you have R exhibits already?

1 MR. LUTZKER: Mark this 6X -- 8X.

2 (Whereupon, the document was
3 marked for identification as
Multimedia Exhibit 8X)

4 CHAIRMAN ARGETSINGER: Is there any objection
5 to this?

6 MR. LANE: Not yet.

7 CHAIRMAN ARGETSINGER: Are you reserving your
8 right to object?

9 MR. LANE: Yes, I am reserving my right to
10 object.

11 BY MR. LUTZKER:

12 Q Do you recognize this as -- in the form and
13 substance of the CDC reports to MPAA in the Phase II
14 report?

15 A At one point in time this would have been the
16 Phase II report or a part of the Phase II report for
17 Multimedia.

18 Q And this is a document that was generated in-
19 house by MPAA?

20 A By Cable Data Corporation for MPAA.

21 Q Now, the first entry for America Comes Alive
22 shows a viewing total of 12,664 for one station, and then
23 no entry for the next station, and a bottom line total,
24 is that correct?

25 A Yes.

1 Q In connection with New Faces, there is a single
2 entry for WPHL, no entries for these other stations, and
3 in the Wembly Festival there are two entries, out of about
4 eight or 10 stations that are referenced there. Why
5 don't we first start on the blanks, you indicated before
6 you weren't sure whether the blanks mean a zero viewing,
7 or something else?

8 A No, a zero viewing, or -- in either event, a
9 blank meant no viewing, no viewing as a distant signal
10 in cable households.

11 Q And in connection with America Comes Alive, the
12 21,000 figure that you have here doesn't jive with the
13 12,000 figure that you have. Was there other material
14 that you would have referred to to develop the 21,000
15 figure?

16 A Indeed, we had subsequent -- I don't know when
17 the date is of this particular printout, but during the
18 exchange of testimony for the direct case, Multimedia
19 supplied the titles for America Comes Alive programs,
20 which we did not have access to before. And undoubtedly,
21 we have increased the America Comes Alive total by other
22 programs which were identified for the first time in
23 that exhibit -- Mr. Thrall's exhibit exchanged in direct
24 testimony.

25 I just finished saying earlier that America

1 Comes Alive is an omnibus series with various titles,
2 sometimes shown individually, and sometimes identified as
3 the America Comes Alive series.

4 Q Allen, this is a document that was provided
5 Multimedia in discovery in connection with this specific
6 exhibit, and the request was to provide the source material
7 used in developing this specific list.

8 A This particular list that you have.

9 Q R-1, right, was derived from that --

10 A No, I did not say so. I did not say so, and
11 I object to your saying I did.

12 I said we developed this from a Phase II report,
13 I did not say it was from a Phase II report of October
14 28th.

15 Q I want to put aside what you said. The discovery
16 request which was made after the rebuttal case was sub-
17 mitted, was to provide Multimedia the material that was
18 used to develop this particular list. That document which
19 you are holding in your hand is what was provided Multi-
20 media to support your development of this document.

21 A Yes, sir. I was unaware of that that it was
22 supplied in that phase of the situation.

23 Q You are saying that document is not the complete
24 discovery document that Multimedia requested?

25 A No, it is presumably the complete document, but

1 I must examine it a little more carefully to find out why
2 there is a discrepancy, if any -- as I indicated, the
3 major problem relates to the multiple type of program
4 titles that went to the America Comes Alive series.
5 (Perusing document) Looking through this list the only
6 difference between the R-1 totals and the totals that I
7 see here, except for the changes that were previously
8 indicated, like the addition of the Young People's Specials,
9 All About Dogs, and the Brother Tough, which are the two
10 programs that were previously separately classified,
11 relates to the America Comes Alive.

12 It appears that we have increased the America
13 Comes Alive credit for the Multimedia from 12,664 to
14 21,508, probably due to additional examination of all of
15 the hard data, to make sure that we gave you credit for
16 everything that we could find.

17 It would have been bad for us if we had had --
18 I would have understood your concern, if we had reduced
19 your total.

20 Q Well, we understand the total difference is
21 insignificant, the question is what source material and
22 whether it was provided in discovery with the necessary
23 documents.

24 A This is the best material that we had available,
25 in response to your discovery request.

1 Q But there must be some other things that you
2 reviewed that weren't included?

3 A I would certainly agree to that, there must be
4 something like that. I know that I went through the
5 unidentified programs listing, and made notations myself
6 indicating credit to Multimedia on one or two occasions,
7 from titles which were otherwise obscure. It could have
8 been something to do with the Mandrell Sisters, or some-
9 thing like that.

10 Q And that would have been put in America Comes
11 Alive, rather than Louise Mandrell?

12 A I am just trying to indicate to you that we
13 made a very, very careful examination of the previously
14 unidentified titles and gave them maximum credit to
15 Multimedia, based upon the best information we had avail-
16 able. We have not, in any event, tried to reduce your
17 total by ignoring or overlooking programs for which you
18 should have received credit.

19 MR. LANE: Mr. Chairman, if I could just ask
20 Mr. Cooper a question I may refresh his recollection.
21 Do you recall a program entitled Behind the
22 Scenes?

23 THE WITNESS: Yes.

24 MR. LANE: Was that one of the America Comes
25 Alive series?

1 THE WITNESS: Yes.

2 MR. LANE: And do you think that one may explain
3 the difference?

4 THE WITNESS: Thank you for refreshing my recol-
5 lection, Behind the Scene certainly was the program that
6 was added to it.

7 COMMISSIONER RAY: Mr. Cooper, did you provide
8 Multimedia with any underlining documentation that included
9 the program Behind the Scene?

10 THE WITNESS: We did not. At the time that the
11 request was made, and the time this compilation was made,
12 we were not aware that Behind the Scene should have been
13 credited to Multimedia.

14 If my recollection is correct, Mr. Ray, the
15 Behind the Scenes program is identified in BIB as being
16 produced and syndicated by Jim Owens Entertainment. There
17 is no reference in the BIB data to Multimedia. And we
18 were not aware that Behind the Scene should have been
19 credited to Multimedia, until we had examined Mr. Thrall's
20 testimony, direct testimony.

21 COMMISSIONER RAY: I am sure you are continuing
22 with this, but did you find any other discrepancies in
23 the numbers?

24 MR. LUTZKER: The Young People's Special dis-
25 crepancies were corrected.

1 COMMISSIONER RAY: Was there any instance where
2 the total time had been reduced for any of your programs
3 in Exhibit R-1?

4 MR. LUTZKER: The numbers from this document
5 comported to the numbers in R-1, with the one exception
6 of America Comes Alive. I don't have anyway of getting
7 behind these numbers, so I am accepting the accuracy of
8 taking these numbers from this page to R-1. I do have
9 some other questions respecting these numbers themselves,
10 but America Comes Alive and Young People's were the only
11 discrepancies that I encountered.

12 COMMISSIONER RAY: But those numbers provided
13 you in the underlining documentation were not prepared
14 by Mr. Cooper though, is that true? The list you just --

15 MR. LUTZKER: This is the list that Cable Data
16 Corp provides MPAA that Mr. Cooper used to develop R-1.

17 COMMISSIONER RAY: Thank you.

18 MR. LANE: Mr. Chairman, -- I'm sorry, Commission-
19 er Ray, the 8-X is just one portion of the underlining
20 material. There is the exact same material which is pro-
21 vided for each of the programs on R-1, with the exception
22 of Behind the Scenes.

23 COMMISSIONER RAY: I understand, thank you.

24 BY MR. LUTZKER:

25 Q Mr. Cooper, just to understand what you are

1 trying to articulate, Multimedia filed its case September
2 29th, you filed your rebuttal, at which time you knew
3 the claim was made for all the particular programs identi-
4 fied in that case.

5 November 18th, you filed your case, and Multi-
6 media made its request for the underlining documentation,
7 with respect to R-1, after that date.

8 A Behind the Scenes was never -- we did not get
9 another CDC printout for Multimedia, presumably which
10 includes Behind the Scenes. But because we had identified
11 -- it was identified as your program, despite the fact
12 that the BIB listing showed -- did not suggest that Multi-
13 media had anything to do with that program, we then added
14 it to your total.

15 Q Would that also be true of Janie Fricke that
16 you list as a Jim Owens -- that came up here?

17 A We knew that Janie Fricke was, because of your
18 previous claims for her, but the Behind the Scenes was
19 specifically not a program listed on your claim, that
20 you had filed for 1984. Nor, is it identified --

21 Q Excuse me, you say it is not listed?

22 A I don't think Behind the Scenes was in your
23 claim for 1984.

24 MR. LANE: Pardon me, he means your claim that
25 you filed in July with the CRT.

1 THE WITNESS: That's the one I am referring to.

2 BY MR. LUTZKER:

3 Q All right, let's move on. Let me go to these
4 blanks on this sheet, Allen. You indicate that that
5 indicates no viewing whatsoever on a distant basis?

6 A It indicates no reportable viewing in cable
7 homes as distant signal.

8 Q And how do you know that?

9 A How do I know that?

10 Q Yes.

11 A I told you how I know that, because we get the
12 Nielsen study reports that indicate the title and the
13 station, and the broadcast and the viewing hours. And
14 there would be a listing then in the Phase I report for
15 KPTV indicating that America Comes Alive was broadcast
16 by that station with zero distant signal viewing.

17 Q Can I ask a simple question, why don't you write
18 in zero then?

19 A Why don't I write in a zero?

20 Q Why doesn't zero appear on this?

21 A Because, in our view, a blank is the same as a
22 zero.

23 COMMISSIONER RAY: Could this mean that the
24 program may have been shown, but shown not during the
25 hours that the survey --

1 THE WITNESS: No, Commissioner Ray, it would
2 only be listed if was shown during the hours that are
3 measured by Nielsen.

4 BY MR. LUTZKER:

5 Q Allen, I just want to pursue this for a minute,
6 because it doesn't seem logical to me. The examples that
7 we have here -- well, the Wembley Festival, you've got
8 two stations out of 10 showing roughly 4,000 viewing hours,
9 4-5,000 viewing hours. Programs that are carried widely
10 -- these are programs carried on hundreds of television
11 stations, in almost all cases, Multimedia specials carried
12 on that basis, with multi-million viewing audiences.
13 There is something that doesn't seem logical to me, that
14 there would be no distant viewing for 80 percent of the
15 cases where you show that.

16 I will point to another example, Music City
17 News Top Country Hits, which is one of the prime specials,
18 probably the top program of Multimedia in any particular
19 year, in terms of specials. There is a listing of -- let
20 me just read this, since I didn't plan this, I don't
21 have copies, but the program has a total of 287,000
22 viewing hours carried on 11 stations, of which seven of
23 the stations show viewing and four do not show viewing.

24 Among the stations that show no viewing is
25 KTVU, a major independent station in the San Francisco

1 market. The general numbers for the stations showing
2 viewing range from 2,000 to roughly 70,000 viewing hours,
3 with most of the stations, probably the average is 30-
4 40,000 viewing hours.

5 CHAIRMAN ARGETSINGER: Mr. Lutzker, what are
6 you reading from?

7 MR. LUTZKER: I am reading from the full docu-
8 ment which was provided to Multimedia, this printout.
9 I excerpted portions of that, and I am just reading from
10 another portion.

11 The entry for KTVU in that case is blank, is
12 it not?

13 THE WITNESS: Yes.

14 BY MR. LUTZKER:

15 Q Now, the significance of it being on that list
16 is that it is within the sample study made by -- in other
17 words, it was broadcast outside the sweep week, so it
18 wouldn't show up on that list, is that correct?

19 A If it was broadcast not within the weeks that
20 KTVU was studied, it would not be.

21 Q So, if it was broadcast within the sweep periods
22 and it is on your list, but it shows essentially no view-
23 ing for that program in the -- for signal rebroadcast
24 by KTV -- now, let me just read something else -- KTVU
25 is a well received distant signal, is it not?

1 A It is a well distributed distant signal.

2 Q Okay. Is it logical, in your opinion, that
3 there would be zero viewing of that program on a distant
4 basis?

5 A Mr. Lutzker, it depends upon when the program
6 was broadcast by this station. This is a little diversion-
7 ary, but I checked a Multimedia owned station with respect
8 to carriage of Multimedia specials, just in the last day
9 or so. And the station I looked at was KSDK, KSDK is a
10 St. Louis station that is owned by Multimedia.

11 Now, I was absolutely amazed to find that one
12 of their specials was broadcast at 12:00 noon on Saturday,
13 and that was the only broadcast of that program during
14 the period I examined. It just is the kind of time when
15 that program would not be viewed as a distant signal.

16 It depends upon when it is broadcast. I mean,
17 if for example, KTVU -- and I don't know what it is, but
18 I can tell you that, as a matter of fact -- we can tell
19 you the day and time of the KTVU broadcast of that program.
20 And I would be very much surprised if it were not in the
21 fringe period. But I don't know.

22 But the point is that I am reporting the Nielsen
23 data as we have them.

24 Q I understand that, and the data is the data, and
25 what you are saying is that when Nielsen -- when this CDC

1 data has blanks, that means --

2 A That Nielsen reported no viewing of that program
3 as transmitted by that station as a distant signal in
4 cable households.

5 Q And yet in every instance where there is view-
6 ing they use a digital number, so that if there was one
7 instance of distant viewing there would be a numeral one,
8 correct?

9 A I think you should be very happy with my R-1
10 because I think you will see Louise Mandrell on R-1, I
11 have inserted a zero, which doesn't exist in the reports.
12 But you are just trifling along the way. When there is a
13 blank it means there was no measurable reportable view-
14 ing as a distant signal in cable households, period.

15 CHAIRMAN ARGETSINGER: Mr. Cooper, what do you
16 mean by measurable?

17 THE WITNESS: That the Nielsen study methodology
18 could not determine that that program transmitted by KTVU
19 was viewed as a distant signal in cable households that
20 were distant with respect to KTVU.

21 CHAIRMAN ARGETSINGER: Their methodology was
22 not sophisticated enough to even detect one soul watching?

23 THE WITNESS: It would, as a matter of fact,
24 one of the criticisms that has been directed, relates to
25 the fact that all of these things are projectable, and

1 that the one would then be projected to, perhaps, a
2 thousand, or 2,000 depending upon the market in which it
3 was located.

4 But the answer, Mr. Chairman, is that to the
5 best of our knowledge, according to the Nielsen methodology,
6 they found no homes outside the KTVU area that were view-
7 ing that KTVU at the time that this program was broadcast.

8 COMMISSIONER RAY: Mr. Lutzker, before you move
9 on, I believe the CRT has requested from you in the past,
10 if we have not requested it, it certainly would be helpful,
11 I believe at least to me, if -- I am not trying to tell
12 you how to prepare your case, but at least for the
13 stations, the Multimedia stations and certain major
14 specials, it would be very helpful if we could have been
15 provided with the dates on which those specials were
16 broadcast on the broadcast station. And I have not seen
17 any information like that in your case.

18 MR. LUTZKER: We can provide -- obviously, in
19 1984 there were 24 or 25 specials, carried by between 100
20 and 150 stations, on an average.

21 COMMISSIONER RAY: I would like to see one
22 exhibit, one time, that showed the country thing special
23 was aired on such and such station, on such and such date,
24 which would then give me some information as to whether
25 those things were carried outside of the sweep period.

1 And then would not show up on MPAA --

2 MR. LUTZKER: We have, in past proceedings --
3 this perhaps predates your tenure on the Commission, but
4 we did in the '79 and '80 proceeding make presentations
5 with respect to the broadcast of particular programs,
6 and substantiated by Mr. Thrall's testimony and by the
7 other documentary evidence, we substantiated the broadcast
8 of these, both within and without the sweep periods.

9 It is clear that the programs, in some instances,
10 air within the sweep periods, and in other instances
11 air outside. And in many cases, the airing is outside
12 the sweep period, because of the nature of the program-
13 ming, which is a one-time special which stations attempt
14 to broadcast outside the sweep periods.

15 We can certainly provide the information --

16 COMMISSIONER RAY: I am not requesting informa-
17 tion in this case, it was a suggestion.

18 MR. LUTZKER: I understand, but there is no
19 dispute in this particular case between Mr. Cooper and
20 myself that that particular special ran within the sweep
21 periods on those 10 or 12 stations that MPAA has been
22 able to identify.

23 The quarrel that we have is to going behind the
24 figures where the MPAA numbers don't, perhaps, present
25 what we feel may be a mirror of the reality.

1 BY MR. LUTZKER:

2 Q Let me go back to a somewhat related question,
3 when you show for the Wembley program, approximately --
4 or for New Faces you show 4100 viewing hours on WPHL,
5 approximately how many cable diaries would be represented
6 by that entry?

7 A How many for that entry? Probably that is
8 based upon a determination of 100,000 diaries.

9 Q The universe is 100,000 diaries, I understand
10 that, how many diary keepers would have --

11 A How many households that viewed it would make
12 the 4100, is that what you are asking me?

13 Q How many diary keepers out of the universe of
14 100,000 diary keepers, how many diary keepers would have
15 made that entry, would have marked -- are we talking 500?

16 A That entry would have been made by one or two
17 households.

18 Q In connection with the Donahue listing, I think
19 this point was brought out by the Chairman yesterday, the
20 study does not -- your study doesn't have WBBM, Chicago
21 included in 1984, that's correct, isn't it?

22 A We have talked about that at length, and the
23 answer is yes, it does not include WBBM.

24 Q And you don't know how many cable homes would
25 have viewed Donahue live out of Chicago, in 1984?

1 A No, I don't know how many would have viewed WBBM,
2 I can only tell you what has been reported by Nielsen.
3 I would imagine on the basis of prior information, when
4 WBBM was part of the sample, it wasn't a substantial number.

5 Q Under 500,000?

6 A Very much under 500,000.

7 Q In making the comparison between 1983 and 1984,
8 you don't indicate, do you, that there are other stations,
9 other than WBBM that have changed from the two years, you
10 view basically the samples as completely comparable --

11 A Mr. Thrall has done so in his rebuttal testimony,
12 and we are prepared to address it when he is here.

13 Q I understand that, but I am asking -- you make
14 no indication about any differences between the sample
15 in 1983 and 1984.

16 A We did not.

17 Q At least with respect to R-1. Does R-1 purport
18 to measure all of Multimedia's programs?

19 A That were broadcast during any of the measuring
20 periods, during the times measured by the Nielsen diaries,
21 on the sample stations, with those conditions, the answer
22 is yes.

23 Q Okay, let me just for our purposes identify
24 the ones that haven't been covered.

25 Mr. Cooper, this is a list of nine specials --

1 MR. LUTZKER: We will call this Multimedia
2 Exhibit 9X.

3 (Whereupon, the document was
4 marked for identification as
Multimedia Exhibit 9X)

5 THE WITNESS: Five specials and three repeats,
6 that gives you eight. Oh, you have six specials and three
7 repeats.

8 BY MR. LUTZKER:

9 Q So there are nine programs that are omitted from
10 your study?

11 A That's not true.

12 Q How is that not true?

13 A Because we have already testified we include
14 Behind the Scenes and the America Comes Alive total. The
15 other reason it is not true, Mr. Lutzker, is the fact
16 that some of these programs may have been -- for example,
17 Gift of Song; Story, Song and Stars, may have been included
18 in the America Comes Alive program.

19 Q May have, do you know whether it was, or not?

20 A They are part of that series, and it could be
21 the series title.

22 Q I will turn you to Exhibit 8X, which is all
23 the documentation that I had as of December 1st, to verify
24 these numbers. Can you look at 8X and indicate where
25 your reference to Story, Song and Stars -- the information

1 is drawable from that?

2 A I told you that it could have been included,
3 because those were titles that I believe, from subsequent
4 testimony, may have been offered as part of the America
5 Comes Alive series, the so-called series that Multimedia
6 presented.

7 One of the first things I said today was that
8 you are using that as an omnibus title for a bunch of
9 separate series.

10 Q According to the documentation MPAA provided
11 Multimedia in discovery, there were two stations listed
12 under America Comes Alive, which I interpret to be two
13 incidence of broadcast, one of which has a viewing total,
14 the other does not. And now you are incorporating a
15 variety of titles under that -- I have no way to verify
16 your comments.

17 A The data you have does not show two instances
18 of --

19 COMMISSIONER RAY: Mr. Lutzker, why don't we
20 short-circuit this for my information, is Behind the
21 Scenes, is Gift of Song, is Story, Song and Stars -- are
22 these three programs part of America Comes Alive?

23 MR. LUTZKER: America Comes Alive is an omnibus
24 title which does cover --

25 COMMISSIONER RAY: Were these three specials

1 included in 1984, in America Comes Alive, if you have
2 the information, please give it to us.

3 MR. LUTZKER: I would say, yes.

4 COMMISSIONER RAY: Thank you.

5 MR. LUTZKER: And this actually may have anti-
6 cipate Commissioner Ray's comment.

7 Let me distribute Multimedia Exhibit 10-X.

8 (Handing)

9 (Whereupon, the document was
10 marked for identification as
Multimedia Exhibit 10-X)

11 MR. LUTZKER: And let me distribute 11-X at the
12 same time. (Handing)

13 (Whereupon, the document was
14 marked for identification as
Multimedia Exhibit 11-X)

15 MR. LANE: Mr. Chairman, might I ask Mr. Lutzker
16 a question?

17 CHAIRMAN ARGETSINGER: Sure.

18 MR. LANE: Is the implication of this exhibit
19 that the title of the program broadcast by the TV station
20 and listed in the TV Guide is Behind the Scenes, or do
21 they list it as America Comes Alive? When you syndicate
22 it, is the title that the station uses America Comes
23 Alive, or are they required to use the individual title?

24 MR. LUTZKER: I honestly don't know.

25 BY MR. LUTZKER:

1 Q Allen, let me tell you what I tried to do,
2 following up, having gotten this document on Monday, I
3 went through available information that I had in the office
4 and conferred with Mr. Thrall, and tried to determine
5 among the programs that are not listed in your R-1,
6 whether any of them were broadcast on sweep stations
7 during the periods that should have been measured, so that
8 even if -- and I will take your representation that zero
9 viewing shows up as a blank on the sheet -- that if the
10 program were broadcast, it would at least show up in your
11 study.

12 And I went through two programs: Behind the
13 Scenes, which we have already had some discussion on,
14 and Chet Atkins, which doesn't appear in your study.
15 And we determined that the programs were broadcast during
16 the sweeps, aired during times which were certainly
17 measurable times, and no documentation was provided to
18 Multimedia that would suggest that these appear anywhere
19 in your study. And certainly there are enough listings
20 here which raises at least a question in my mind about
21 the study.

22 A Mr. Lutzker, I am willing to take your listing
23 of Chet Atkins and assume that your data are correct, and
24 we will attempt to tell you what was, or was not broad-
25 cast according to the Nielsen data, by these particular

1 stations at those particular times. I think we can re-
2 construct it.

3 The difficulty that we have relates to network
4 stations because there are no listing of the network pro-
5 grams in the Phase I report. But that should not be a
6 problem with most of these stations.

7 To the extent that we can, I will tell you, we
8 will provide you with the data that we have concerning
9 the programs that were broadcast at this time.

10 MR. LUTZKER: Mr. Chairman, let me just make a
11 comment at this point, I appreciate Mr. Cooper's offer.
12 I am troubled by the fact that in discovery context, and
13 initially with respect to the first phase of this pro-
14 ceeding, when I endeavored to obtain information of this
15 sort, I was advised that the data did not exist. The
16 documentation that Mr. Halperin is looking at today, I
17 don't know if that is the data -- I don't know exactly
18 what the data is that Mr. Cooper is referring to.

19 But we asked for all underlining material
20 relative to this particular exhibit and met with the fact
21 that 1984 presented a new situation for MPAA, they did
22 not have the source books that they had received in 1983
23 from Nielsen, and this data was not available.

24 Now Mr. Cooper at least suggests that maybe
25 there is data that is available. And to the extent that

1 it is, it is appropriate that it was discoverable docu-
2 ments and it should have been made available at the appro-
3 priate time.

4 MR. LANE: Mr. Chairman, I would like to point
5 out that the information that we are going to look up is
6 the TV Guide information about these programs. And I did
7 offer Mr. Lutzker the TV Guides and he could have looked
8 through them, but he said that he didn't want to do that.

9 MR. LUTZKER: If that is the information that
10 you are going to look at --

11 MR. LANE: That is the information we will look
12 at.

13 MR. LUTZKER: Then I will withdraw that.

14 COMMISSIONER RAY: Mr. Cooper, why does Chet
15 Atkins appear -- maybe you have answered that already --
16 in R-1?

17 THE WITNESS: It is tied in to another program
18 title. The way that Multimedia has been packaging their
19 "specials" has been difficult, they do not package them
20 separately.

21 COMMISSIONER RAY: Oh, it could have been a
22 part of Country Comes Alive, or Music City?

23 THE WITNESS: New Faces in Country Music, some-
24 thing of that nature.

25 COMMISSIONER RAY: I see.

1 BY MR. LUTZKER:

2 Q Let me just test that comment, Mr. Cooper, give
3 me all the omnibus titles -- let me give you your document
4 here, (handing). And you have indicated with the exception
5 of perhaps what would appear to be a single entry for
6 Behind the Scenes, can you identify the omnibus titles
7 that you are referring to and where in your -- where you
8 would expect the Chet Atkins and other information to
9 reside, looking also at 10-X and 11-X, in terms of the
10 particular stations?

11 A I would expect that Chet Atkins could show up
12 in America Comes Alive.

13 Q Excuse me, let's focus on that. How many list-
14 ings do you have for America Comes Alive?

15 A I have two listings for America Comes Alive.

16 Q How many entries are there in this?

17 A Your listing has more than two.

18 Q So it is possible that there are two entries in
19 America --

20 A Both the stations that are listed for America
21 Comes Alive are also on your Chet Atkins list.

22 Q And are the also on the --

23 A Just easy does it, you asked me, now you want
24 to ask another question, or do you want me to continue
25 this? You asked me a question before, do you want me to

1 answer it?

2 Q Go ahead.

3 A All right, in addition to America Comes Alive,
4 another omnibus title would be Country Comes Alive.

5 Q How many entries are there for County Comes
6 Alive?

7 A There are three entries for Country Comes Alive.
8 And, again, it includes three stations that are on your
9 Chet Atkins list.

10 COMMISSIONER RAY: What is the difference
11 between Tribute to Chet Atkins and Chet Atkins?

12 THE WITNESS: I don't know. I would imagine
13 that it is the Chet Atkins program.

14 COMMISSIONER RAY: Because you do have a Tribute
15 I would --

16 THE WITNESS: I will get to that.

17 MR. LANE: Mr. Chairman, this is the reason for
18 my question of Mr. Lutzker before, can he tell us for
19 certain that this is the title used by the TV station,
20 because that is the information we use, not what Multi-
21 media entitles each program.

22 THE WITNESS: Mr. Ray, I am indebted to you,
23 because if you look through the Tribute to Chet Atkins
24 program -- I am trying to check off these programs and
25 stations listed here -- and I shall complete that exercise

1 in about one minute. (Perusing documents) I have com-
2 pleted this exercise.

3 On this exhibit that Mr. Lutzker just provided
4 on Chet Atkins, every station with one exception, is
5 listed in the material that was provided to Mr. Lutzker,
6 as A Tribute to Chet Atkins title. The exception is
7 KMOL, the San Antonio station.

8 On this exhibit we show -- on the data from
9 the Nielsen Study that were furnished to Mr. Lutzker,
10 report the carriage and viewing of A Tribute to Chet Atkins
11 on KNBC, WUAB, WAGA, KMSP, KSDK, WMAR, KPTV, WTTV, WJAR,
12 WDTN, WYTV, and WTOV.

13 I don't see anything that is missing there.

14 BY MR. LUTZKER:

15 Q Behind the Scenes?

16 A I told you the Behind the Scenes data we have
17 given you the information, we have added Behind the Scenes
18 to the America Comes Alive total. That is one of the first
19 things we discussed this morning. And I am quite sure --

20 Q Will you be able to provide information as to
21 whether all of these stations are covered within the
22 Behind the Scenes?

23 A We can provide you with the printout for the
24 Behind the Scenes.

25 Q Thank you.

1 Now, Allen, would you turn to Exhibit R-2?

2 A (Perusing documents)

3 CHAIRMAN ARGETSINGER: Let's take about a three-
4 minute break at this time.

5 (Whereupon, a short recess was taken)

6 CHAIRMAN ARGETSINGER: You may continue, Mr.
7 Lutzker.

8 BY MR. LUTZKER:

9 Q Allen, before we leave R-1, just one last point,
10 if you knew, for example, where KHJ was listed in your
11 report as having no distant viewing for Music City News,
12 Top Country Hits program that the program was broadcast
13 live during prime time, during a sweep period, would
14 that raise a question in your mind as to the absence of
15 any distant viewing on that program?

16 A No, sir.

17 Q Are these questions that you have ever posed
18 to Nielsen?

19 A No, sir.

20 Q Okay, let's turn to Exhibit R-2.

21 A (Perusing documents)

22 Q Am I reading this correctly, just looking at
23 the bottom line, 1984, do these figures indicate that the
24 increase from 1983 for all syndicated programs was 5.4
25 percent, for MPAA's programs was 7.4, and for Donahue

1 was 8 percent?

2 A That's correct, it indicates that Donahue went
3 up 400,000 hours, while the total for all syndicated
4 series went up 127 million; and for the MPAA claimant
5 programs it went up 164 million hours. Donahue went up
6 400,000.

7 Q Looking at the information for 1981 and 1982,
8 with respect to Donahue, that was presented to the
9 Tribunal several proceedings ago, was it not, that
10 specific information?

11 A It was the kind of form that would have been
12 presented, I don't know if this particular -- in this
13 format --

14 Q In the 1982 proceeding was the difference
15 between 1981 and 1982 in viewing hours presented to the
16 Tribunal?

17 A Yes.

18 Q Turn to Exhibit R-4 for a minute.

19 A (Perusing documents)

20 Q In your statement you indicate -- in the text
21 of your statement you indicate that looking at the DMA,
22 local, total and distant, as you have done it, is a fair
23 but not a precise approximation of cable viewing or cable
24 households.

25 A I used the term approximation.

1 Q Let's assume arguendo that I agree with that
2 conclusion, looking at the 1983 to 1984 figures what
3 kind of percentage change are we talking about with
4 respect to Donahue, focusing on '83 and '84?

5 A Probably a very small decline. You are talking
6 about in addition to so-called "distant", but a decline.

7 Q Would you turn to Exhibit R-5?

8 A (Perusing documents)

9 Q I want to try to understand what meaning, if
10 any, this particular exhibit has. What sources did you
11 use in preparing this exhibit?

12 A The source that was used was the Special Nielsen
13 Study Report, which is the only evidence in this proceed-
14 ing with respect to distant signal viewing in cable house-
15 holds.

16 Q Are you talking about the Phase I, or the CDC,
17 or --

18 A I said the Special Nielsen Report, and I looked
19 at the Phase I, Phase II material for Merv and Donahue.

20 Q Okay, so you looked at that material. Did you
21 -- and you looked at the ROSPs?

22 A I did not look at the ROSPs to prepare this
23 material.

24 Q If the ROSPs don't include any data for a
25 particular program, would the Nielsen Study have

1 information on that program?

2 A I am lost. The ROSPs do not contain any data
3 on -- the ROSP data are restricted to syndicated series
4 broadcast by five or more stations during the measurement
5 period. So the data that we -- we have the Nielsen data,
6 that would include all series, local programs -- I don't
7 understand your question, Mr. Lutzker.

8 Obviously the data from the Nielsen Study is
9 more comprehensive than the data from ROSP.

10 Q Is there any relevance that Merv does not show
11 up as being carried on KVOs, according to the ROSP, in
12 July of 1984, is that relevant to anything you did?

13 A I did not look at the ROSP. I would be sur-
14 prised if the ROSP doesn't show Merv being carried by
15 KVOs in that period.

16 Q Do you want to see if you can find KVOs?

17 A (Perusing document) This may have been in
18 July of 1984, KVOs, Bellingham may not have qualified for
19 a listing in the ROSP, by virtue of its total audience
20 being below measurement standards. And that is not un-
21 common for many stations.

22 Q And it is also true that it probably wouldn't
23 be in here because the station itself -- excuse me, the
24 program did not have a measurable --

25 A No, I would say, Mr. Lutzker, if you were to

1 examine that ROSP, for July of 1984, without having made
2 a major study of it, I would personally doubt whether
3 you would find any listing for KVOs for any program in
4 that book.

5 Q In preparing this study of R-5 --

6 A Including the Donahue Show. May I look at the
7 Donahue Show, please, on KVOs? (Perusing documents)
8 The Donahue Show is not shown, KVOs is not shown with
9 respect to Donahue in July of 1984.

10 My testimony with respect to KVOs not being
11 included in its totality in this book is my response.

12 Q In preparing this exhibit did you look to see
13 whether the Donahue or Merv show were carried by other
14 stations on the cable systems that retransmitted KVOs?

15 A I did not.

16 Q You have no way of knowing, for example, that
17 other -- that cable viewers were watching Donahue or Merv
18 on other stations available on that system, on the same
19 days that this data was collected?

20 A No, we do not have such data.

21 Q Which market is KVOs in?

22 A KVOs is located in Bellingham, Washington and
23 it is assigned to the Seattle-Tacoma market, designated
24 market area both by Nielsen and by Arbitron.

25 Q Would Seattle show up in that?

1 A Seattle does show up.

2 Q Would you see whether Donahue or Merv are also
3 carried on a Seattle station?

4 A I did see that Merv was carried by KIRO in
5 Seattle, and Donahue, I believe, was also carried by that
6 same station -- I don't know if it was on that same
7 station, or not, but I did see the Donahue listing for
8 a Seattle station, other than KVOs. In Seattle it was
9 carried by KING.

10 Q And Merv, would you just check --

11 A I told you what Merv was, Merv was by KIRO,
12 in Seattle.

13 COMMISSIONER AGUERO: Mr. Cooper, this Exhibit
14 No. R-5 shows that Merv is ahead of the Donahue Show,
15 but I am wondering the following, if you switch the
16 time of the show, if you put Donahue at 4:30 in the
17 afternoon and Merv Griffin at 9:00 in the morning, do you
18 think the result would be the same, or would there be a
19 big difference?

20 THE WITNESS: The issue, Commissioner Aguero,
21 relates to cable home viewing as a distant signal. As a
22 broadcast program at 9:00 in the morning, let's say,
23 which is the usual time for the Donahue Show, the com-
24 petition with other popular programs was very minor. Most
25 stations, or many stations at 9:00 a.m. have local

1 programming of local interest to the community.

2 In contrast the Merv show, which is shown
3 generally on independent stations, and generally, again,
4 there are exceptions, at around 3:00 or 4:00 p.m. in the
5 afternoon faces very severe competition from all stations,
6 all television stations, both network affiliates and
7 independent stations, because, as we testified earlier,
8 this early fringe area, after the network programs are
9 through and the soap operas are through, is probably the
10 most profitable area for television stations to operate.
11 This is the area when they present their best syndicated
12 programming, in order to sell spot advertising.

13 COMMISSIONER AGUERO: Four o'clock in the
14 afternoon and 4:30?

15 THE WITNESS: Yes, sir, it is a very competitive
16 time.

17 COMMISSIONER AGUERO: Thank you.

18 BY MR. LUTZKER:

19 Q Based on that, is it your understanding that
20 the ratings of Merv in 1984 were higher than Donahue?

21 A The ratings for Merv on comparable stations
22 would be about at the same level, or possibly higher than
23 Donahue. It would depend upon --

24 Q That is recognizing that Donahue is in this
25 morning period, when there is less competition, but

1 smaller audiences versus Merv during later afternoons?

2 A It takes into account the two factors, one is
3 that Merv faces stronger competition, and the stations
4 that carry Merv are generally independent stations, rather
5 than the network affiliates that carry the Donahue Show.
6 And primarily, the Merv shows as I testified yesterday,
7 are carried primarily by UHF independents in markets,
8 whereas the Donahue Show is carried by VHF network
9 affiliates.

10 But as I indicated also, if you took network
11 affiliates in both instances or the same type of indepen-
12 dent station, that the Merv show ratings will be comparable
13 to higher, or somewhat higher, or somewhat lower than
14 Donahue.

15 Q Has the Merv Show been cancelled?

16 A Merv Griffin apparently had enough money and
17 enough satisfaction he could discontinue working.

18 MR. LUTZKER: No further questions.

19 CHAIRMAN ARGETSINGER: Mr. Garrett.

20 MR. GARRETT: Mr. Chairman, I have a couple of
21 brief questions.

22 CROSS-EXAMINATION

23 BY MR. GARRETT:

24 Q Good morning, Allen.

25 A Good morning, Bob.

1 Q Allen, you testified yesterday concerning Pro-
2 gram Suppliers' Exhibit No. 1-X, do you recall that?

3 A I do, sir.

4 Q Do you have a copy of that exhibit before you,
5 Allen? If you don't, I do.

6 A (Perusing documents)

7 Q Do you now have a copy of Program Suppliers'
8 Exhibit 1-X before you?

9 A I do.

10 Q Allen, this is a letter dated January 30th,
11 1984, correct?

12 A Yes, sir.

13 Q And it is a letter signed by Mr. Gary Fogel of
14 Columbia Television Pictures, is that correct?

15 A Yes, sir.

16 Q And it is addressed to Mr. Gary Hunt and Mr.
17 Barry Jaffee of Hunt-Jaffee Productions?

18 A It is, sir.

19 Q This letter, if I understand your testimony
20 yesterday, Allen, sets forth the terms of an agreement
21 between Columbia Picture Television, on the one hand, and
22 Hunt-Jaffee Productions on the other, is that correct?

23 A That's correct.

24 Q And the agreement concerns the music video show,
25 Top 40 Videos, is that correct?

1 A Yes, sir.

2 Q And it sets forth the terms of the agreement
3 pursuant to which Columbia Pictures Television would
4 syndicate the music video show Top 40 Videos in 1984,
5 is that correct?

6 A That's correct.

7 Q And does this document, Program Suppliers'
8 Exhibit No. 1-X set forth all of the terms of the agree-
9 ment between Columbia Pictures Television on the one hand,
10 and Hunt-Jaffee Productions on the other, concerning Top
11 40 Videos?

12 A On the basis of my recent conversation with
13 an officer of Columbia Pictures, I am advised that this
14 was the contract in force and fulfilled during 1984.

15 Q And there are no terms of the agreement between
16 Columbia and Hunt-Jaffee that are not set forth in Program
17 Suppliers' Exhibit No. 1-X, to the best of your knowledge?

18 A I am advised that this agreement was the basis
19 for Columbia syndication of Top 40 Videos during 1984.

20 Q But my question, Allen, a little more specific
21 than that, was whether or not there are any terms of the
22 agreement between Columbia Picture Television on the one
23 hand, and Hunt-Jaffee Productions on the other, concerning
24 Top 40 Videos, other than those set forth in Program
25 Suppliers' Exhibit No. 1-X, to the best of your knowledge?

1 A To the best of my knowledge, there were no
2 other -- there were no variations from the contract.

3 Q All right. And you are not aware of any other
4 agreements that Columbia Pictures Television and Hunt-
5 Jaffee Productions have enter into with regard to the
6 syndication of Top 40 Videos in 1984?

7 A I am not aware of any.

8 Q Allen, let me ask you to turn to page four of
9 the agreement.

10 A (Perusing document)

11 Q The very last line says, and I will just read
12 this for the record, "This will then serve as a binding
13 memorandum of agreement until execution of a more formal
14 agreement, which will incorporate all of the terms hereof
15 and such other terms as are customary in agreements with
16 CPT", do you see that, Allen?

17 A Yes, I do.

18 Q And it is your understanding that no such formal
19 agreement was ever entered into between the parties?

20 A That is my understanding.

21 Q And, Allen, the copies that were provided for
22 the record here are signed by Mr. Fogel, but not by anyone
23 from Hunt-Jaffee Productions, is that correct?

24 A That's correct.

25 Q And your understanding is that even though --

1 well, was the agreement ever signed?

2 A The information that was conveyed to me, is it
3 was never signed.

4 Q But it is your understanding that the parties
5 nevertheless treated this as a binding agreement between
6 them, notwithstanding the fact that it had never been
7 executed?

8 A Yes, sir.

9 Q And the basis of your understanding concerning
10 this agreement, Allen, is your conversation with an
11 individual at Columbia Pictures Television, correct?

12 A With Mr. Boom of Columbia Pictures Television.

13 Q And who is Mr. Boom?

14 A Mr. Boom, I believe, is legal counsel to
15 Columbia Pictures Television in California.

16 Q Have you spoken to Mr. Fogel, the signatory to
17 this --

18 A No, I have not. I obtained this contract first
19 by contacting Ann Atkinson, who is the counsel for
20 Columbia Pictures in New York, and she then arranged for
21 Mr. Boom to send me this contract.

22 Q Okay. Allen, you had a brief colloquy with
23 Mr. Lutzker earlier about a document entitled a Phase I
24 Report, do you recall that?

25 A Yes, sir.

1 Q And do you recall yesterday that Mr. Stewart
2 handed out a document from the 1983 record, identified as
3 Tribunal Exhibit No. 2, do you recall that?

4 A He handed out a lot of papers yesterday, Bob.
5 I am familiar with this document.

6 Q And that document, Allen, is also in the record
7 of this proceeding as a result of Warners having incorpor-
8 ated in this proceeding. But, Allen, is that document,
9 Tribunal Exhibit No. 2 from the 1983 proceeding, a portion
10 of the Phase I Report from your 1983 Nielsen Study?

11 A Yes, it is, it is the portion of the report
12 that deals with WTBS-Atlanta.

13 Q So we are clear, the document that you have
14 provided to Mr. Stewart -- or actually Mr. Halperin,
15 contains the same information, the same types of informa-
16 tion as would have been contained in Tribunal Exhibit
17 No. 2 in the 1983 proceeding?

18 A Essentially, yes.

19 Q Except the difference is that while Tribunal
20 Exhibit No. 2 is limited to WTBS, you have given Mr.
21 Stewart access to the entire Phase I Report --

22 A No, the only difference, Bob, in terms of format
23 is that the Tribunal Exhibit No. 2, the last column has
24 the average viewing per quarter-hour, whereas the current
25 report shows the viewing in hours, rather than quarter-hours.

1 Q Other than that, there are no differences between
2 those two?

3 A That's correct.

4 Q And this Tribunal Exhibit No. 2, as well as the
5 Phase I Report that you have provided to Mr. Stewart for
6 1984 will identify the viewing totals for every program
7 within your study, is that not correct?

8 A That's correct.

9 Q That includes programs for which you, the MPAA
10 represented claimants, are not claiming, is that not
11 correct?

12 A That's correct.

13 MR. GARRETT: I have no further questions.
14 Thank you, Allen.

15 CHAIRMAN ARGETSINGER: Ms. Powell, does Music
16 have any questions?

17 MS. POWELL: No, sir.

18 CHAIRMAN ARGETSINGER: Mr. Stewart, would you
19 care to wait until after lunch?

20 MR. STEWART: Yes, sir, I need to confer with
21 Mr. Halperin over the lunch hour --

22 CHAIRMAN ARGETSINGER: Because you would only
23 have about 10 minutes.

24 I think then we will adjourn until 2:00 o'clock.

25 (Whereupon, the luncheon recess was taken at

11:47 a.m.)

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AFTERNOON SESSION

(2:10 p.m.)

CHAIRMAN ARGETSINGER: Back on the record.

Mr. Stewart?

MR. STEWART: We just received a few minutes ago, copies of certain pages that have been -- from which information has been excised, pages from the Phase I printout for 1984 that was talked about yesterday and further this morning. I would like to introduce NAB Exhibit II-8X, and I'm afraid that I haven't gotten enough copies of the attachments to provide one for everyone, but I will provide additional copies.

(Whereupon, the document was marked NAB Exhibit No. II-8X for identification.)

This exhibit replaces the II-8X that I introduced and withdrew yesterday. There are a few changes in the numbers, which I'll describe.

COMMISSIONER AGUERO: We gave those back to yesterday, did we not?

MR. STEWART: Yes, you did. I've taken all those back, so there shouldn't be any loose ones around at this point.

Each of the programs that was on the version I distributed yesterday remains on this exhibit today, but

1 the changes are additional viewing in the WTTV program
2 called IHSAA Package. That's the only change in the num-
3 bers and it increased the total amount of viewing in that
4 first category there.

5 We have also added additional program titles
6 in quotes under IHSSA Package, and I might just explain
7 further that there were additional Report From Statehouse
8 listings but they had zero viewing, so we didn't provide
9 any additional listings there. I guess they are shown,
10 in any case, on the last attached page.

11 COMMISSIONER RAY: Mr. Stewart, probably I'm
12 supposed to know this, but I don't. What is IHSAA?

13 MR. STEWART: Well, I think, in fact, in prior
14 proceedings it was explained that it was Indiana High
15 School Athletic Association, or something like that.

16 COMMISSIONER RAY: Thank you.

17 MR. STEWART: And as you will see, the last
18 two listings under there are verbatim from the printout
19 and they are INSAA Football and INSAA Volleyball. And
20 if you will look at the attachments, they are, as I say,
21 the copies of the lines from the printout pages that
22 support the individual listings, with the title of the
23 program listed at the left, the program type or categoriza-
24 tion in the next couple of columns or a couple of columns
25 over and, at the far, right-hand column, the number of

1 viewing hours.

2 CROSS-EXAMINATION (Resumed)

3 BY MR. STEWART:

4 Q Mr. Cooper, do you have a copy of this Exhibit
5 II-8X?

6 A I do, Mr. Stewart.

7 Q With respect to the first category, the six
8 stations for which the subtotal is listed as 124,124
9 viewing hours --

10 A Four stations.

11 Q I'm sorry -- there are six listings and there
12 are four separate stations, you're correct. Do you have
13 any reservations about any of those numbers or any of
14 those listings?

15 A I do, Mr. Stewart.

16 Q Could you explain them to me, please.

17 A Turning, first, to the first listing for WCCB
18 refers to Tom Reed Show, and below in parenthesis is
19 N.C. State Coach's Show. The listing in the Nielsen
20 report was the N.C. State Coach's Show which you then
21 have translated to Tom Reed Show.

22 It is my information that Tom Reed is the
23 football coach at one of the North Carolina colleges.
24 This program was broadcast during February, which is not
25 usual time at all for a football coach's program.

1 Furthermore --

2 Q May I -- are you going to move on to another
3 program?

4 A Pardon me?

5 Q Are you going to move on to another program or
6 do you have more on this program?

7 A I will move on to other programs. You don't
8 want me to continue with this one? Is that enough?

9 Q Before you do so, I'd like to ask you some
10 questions about that program.

11 A You may ask me about that program right now.

12 Q Thank you.

13 (Laughter.)

14 MR. GARRETT: Who's doing the cross here?

15 (Laughter.)

16 BY MR. STEWART:

17 Q We observed that as well, Mr. Cooper, this
18 morning, when we were able to look at the printout and
19 take complete notes, and we saw that the viewing was in
20 February, and we have tried to confirm with the stations
21 involved and were unable to do so over the lunch break.

22 Are you aware, Mr. Cooper, who the North Carolina
23 State University basketball coach is?

24 A I believe that it's Jim Valvano.

25 Q And are you aware that the Jim Valvano Show,

1 syndicated by the same station, WRAL, was syndicated by
2 the same station, WRAL, who syndicated the Tom Reed Show
3 in 1984?

4 A According to your Exhibit II-2, WRAL was the
5 originator of the North Carolina State Coach's Show and
6 the Jim Valvano Show.

7 Q And the Tom Reed Show.

8 A I don't know anything about the Tom Reed Show.
9 The Tom Reed Show is Exhibit II-2 you called about --
10 excuse me -- that's true. In your Exhibit II-2, you
11 refer to the program as the Tom Reed Show and the Jim
12 Valvano Show.

13 Q Did you try to confirm with anyone the title
14 of the -- whether the program listed by Nielsen as
15 NC ST Coach Sh had an alternative title?

16 A Yes, I have.

17 Q And what did you discover?

18 A We have gone through the TV Guide for February
19 of 1984 for the station WCCB in Charlotte, North Carolina,
20 and determined that on 7:00 p.m. on Sunday, from 7:00
21 to 7:30 p.m. on Sundays during February, this station
22 broadcast a program called N.C. State Basketball, and this
23 was consistent during the four weeks of the period.

24 Q And if you will look at the first attached
25 printout page, the total quarterhours for those four

1 Sundays in February were eight quarterhours, is that
2 correct?

3 A It would be eight quarterhours, yes.

4 Q And that indicates a half-hour weekly program,
5 right?

6 A Yes, it indicates four half-hour programs.

7 Q So we're not talking about a live telecast of
8 a N.C. State University basketball game, are they?

9 A I have no -- and it is not a basketball game
10 but it is not the Tom Reed Show.

11 Q When did you check that information that you
12 just described to me?

13 A I know from reliable sources that Tom Reed is
14 a football coach and that he would not be a commentator
15 for a North Carolina State basketball game.

16 Q I'm sorry, my reference was not clear. The
17 information about the TV Guide listings for WCCB --

18 A When did I do -- what is your question?

19 Q When did you check the TV Guide listings for
20 WCCB?

21 A Overnight.

22 Q Last night, is that correct?

23 A Yes, sir.

24 COMMISSIONER RAY: For my clarification, it's
25 either the Tom Reed Show or the Jim Valvano Show but, in

1 any case, there was a North Carolina State Coach Show
2 that accumulated 2,554 viewing hours, is that true?

3 THE WITNESS: Yes, sir, but the issue, Commis-
4 sioner Ray, was that there was no claim made for North
5 Carolina State Coach's Show.

6 COMMISSIONER RAY: Was there a claim made for
7 Jim Valvano?

8 THE WITNESS: There was a claim made for Jim
9 Valvano, but not on WCCB, which is the station that we're
10 dealing with.

11 BY MR. STEWART:

12 Q Would you move on to the additional programs
13 you have comments on?

14 A Yes. I must retract my statement yesterday
15 with respect to Candlepin Bowling. I was certain that
16 Candlepin Bowling on WGGB was not the same program that
17 was originated by WCVB. The reason I made this reference
18 was because the Candlepin Bowling in the Nielsen material,
19 according to the Nielsen sources, was a local program
20 and not a syndicated program, a different program.

21 However, again, overnight we have checked the
22 TV Guide listing and determined that the Candlepin Bowling
23 program at this time was simulcast, was simultaneously
24 broadcast by station WCVB and WGGB and, therefore, I will
25 consent and certainly accept NAB's contention that the

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1 Candlepin Bowling local listing is, indeed, the Candlepin
2 Bowling Show originated by WCVB.

3 Q Let me be clear on that. This is the program
4 that you said yesterday you were certain was not listed
5 under the title Candlepin Bowling in the printout we
6 referred to, is that correct?

7 A That's what I said yesterday, yes.

8 Q And if we turn to the third attached page,
9 we'll see that the listing is verbatim Candlepin Bowling --

10 A As a local program.

11 Q I want to get to that. First of all, WCVB and
12 WGGB are not commonly-owned, are they?

13 A They are not.

14 Q They are separately owned stations.

15 A They are totally separately owned stations.

16 Q Now, WCVB reported to NAB that it had produced
17 a program called Candlepin Bowling and distributed it
18 to WGGB, is that correct?

19 A That's correct.

20 Q And NAB made a claim for that based on that
21 information from the station, is that correct?

22 A That's correct.

23 Q Now, who classified that program on WGGB as
24 a local program?

25 A The A.C. Nielsen Company.

1 Q A.C. Nielsen Company under whose direction, Mr.
2 Cooper?

3 A Under whose direction?

4 Q Yes.

5 A The person who was principally in charge of
6 Nielsen Company was a young lady named Marie Simms. Does
7 that answer your question?

8 Q Mr. Cooper, Ms. Kessler has already testified
9 in this proceeding that the Nielsen Company has no knowl-
10 edge about the Tribunal's categorizations of the different
11 program types, including the Local program category, and
12 she's the one who gives the direction to the Nielsen
13 Company about what programs to categorize into what pro-
14 gram categories, isn't that correct?

15 A That is not correct.

16 Q Is her testimony --

17 A She gives her general definitions of programs.
18 She does not say specifically that this program is to be
19 classified in one way, by a specific title on a specific
20 station, and another program, specific program on a
21 specific station is to be classified another way.

22 Q Would you look at the printout page that we've
23 attached for Candlepin Bowling, please?

24 A Yes.

25 Q You see under Program Type there are two

1 columns, one labeled an abbreviation for Nielsen and the
2 other labeled MPAA, is that correct?

3 A That's correct.

4 Q And the MPAA categorization is Local as well,
5 is that not correct?

6 A That's correct.

7 Q Now, you made that categorization, is that
8 correct?

9 A I did not make that categorization.

10 Q I'm sorry -- I meant MPAA made that classifica-
11 tion?

12 A The categorization there was made primarily by
13 Tom Larson's people at Cable Data Corporation.

14 Q And that categorization was simply wrong, isn't
15 that correct, Mr. Cooper?

16 A On the basis of the information that I have
17 now, it was wrong. I think that the problem, Mr. Stewart,
18 is that Candlepin Bowling is a generic title and one that
19 I would identify specifically -- necessarily specifically
20 with one series.

21 Q Well, we're talking about your Exhibit R-11 in
22 this phase of the proceeding, Mr. Cooper, and in that
23 exhibit you stated -- you represented to the Tribunal that
24 there was no viewing to Candlepin Bowling on WGGB,
25 didn't you?

1 A Mr. Stewart, I have said that I made a mistake.
2 Do you want me to repeat it again?

3 Q In fact, all of the programs here are categorized
4 as Local programs, is that not correct? I'm sorry --
5 Quest for Gold is not, is that correct? -- and all the
6 rest are Local?

7 A That's correct.

8 Q And all of those categorizations of those
9 programs as Local are in error, is that not correct?

10 A That is not correct. That is not incorrect,
11 to the best of my knowledge.

12 Q It is not incorrect that the Local categoriza-
13 tions are in error?

14 A I have no basis that I know of right at this
15 time, to say that the other programs were "not Local".
16 I don't know that Report From Statehouse, from my own
17 information, was carried by any other station but WTTV.

18 Q Mr. Cooper -- and that's because you simply
19 disregarded the question and errors -- I'm sorry -- you
20 disregard the entire NAB case except to the extent that
21 you can prove it yourself by reference to the ROSP or
22 some other --

23 A Or reference to some other credible source,
24 of course.

25 Q I see. Would you go on? Do you have other

1 comments about other programs on this list?

2 A I think that if I recall correctly, there was
3 testimony presented earlier on Quest for Gold and which,
4 again, we indicated that we had made an error or could
5 have made an error with respect to Quest for Gold because
6 there was a syndicated series with that same name.

7 Q Well, this is a new error, though, is it not,
8 Mr. Cooper?

9 A What is a new error?

10 Q Your first error was to include Quest for Gold
11 in the MPAA represented list of programs, is that not --

12 MR. LANE: That's untrue, Mr. Chairman. During
13 the testimony, the testimony was that there were two
14 Quest for Gold programs, and we did not concede that we
15 made an error. We conceded that there were two Quest
16 for Gold programs.

17 MR. STEWART: I'm sorry for that misunderstanding-
18 ing, and I'll withdraw that question.

19 COMMISSIONER RAY: Excuse me, Mr. Chairman.
20 This whole hearing is a "quest for gold", isn't it?

21 (Laughter.)

22 CHAIRMAN ARGETSINGER: Yes, it is. Very good,
23 Mr. Commissioner.

24 MR. STEWART: Unlike "nickel" in NAB's case.

25 (Laughter.)

1 MR. GARRETT: And a quest for misery.

2 BY MR. STEWART:

3 Q In your Exhibit R-11, Mr. Cooper, you have a
4 listing for the viewing to programs that appear on WTTV
5 that also appear on NAB Exhibit II-2, is that right?

6 A Yes. I think, again, I will have to expres --
7 I made a faux pas with respect to WTTV, that I did not --
8 the WTTV listing is not as comprehensive as the other
9 ones were, and it was my fault. The problem was mine.
10 I will admit, again, to error.

11 Q Do you have any other comments on the programs
12 down to the partial subtotal of 124,000?

13 A No, I have not. I would just, again, indicate
14 that in the prior year we would have classified possibly
15 the Indiana High School things as something as Little
16 Sports rather than as any other kind of program, and
17 under no circumstances counted them in the syndicated
18 area. We would not have made a claim for it.

19 The other situation is that we try to match
20 titles in Exhibit II-2, with the titles in the Nielsen
21 material, and there was no title for IHSAA Package, but
22 aside from that it is a minor concern.

23 Q Let me just make this clear. There is abso-
24 lutely no question, is there, that there is no such thing
25 as a Minor Sports category any longer.

1 A I agree.

2 Q And these programs are syndicated programs?

3 A I don't agree.

4 Q Why not?

5 A Because I have no information that they were
6 syndicated.

7 Q Other than the record evidence that NAB has put
8 into the proceeding?

9 A Other than your claims, right.

10 Q Now, looking at the next group of programs --
11 the Dance Show, Miller's Court and Fight Back -- that's
12 Fight Back with David Horowitz, with respect to these
13 programs, Mr. Cooper, MPAA represents the syndicator,
14 is that correct?

15 A With respect to those three programs, yes.

16 Q And NAB represents the producer of those pro-
17 grams, the station that produced each of those three
18 programs. Do you have any reservations about that state-
19 ment?

20 A I think there is representation with respect
21 to Miller's Court both by NAB and by MPAA. The same
22 thing -- and since that station is produced by Metromedia,
23 we represent Metromedia, and I can't accept that.

24 Q On what basis do you represent Metromedia with
25 respect to Miller's Court, Mr. Cooper? Do you have

1 documentation?

2 A I believe that documentation is with respect
3 to the claim filed by Metromedia and our contacts with
4 Metromedia throughout this proceeding.

5 Q I want to show you two letters from Mr. Thomas
6 H. Dougherty date September 9 and September 29, 1986, and
7 they were letters to Mr. Halperin, and these letters
8 state that Metromedia is the appropriate claimant for
9 television stations that were licensed to it until March
10 3, 1986. That's the effective date of the closing of the
11 sale to Fox. That was the event that required the modifi-
12 cation of NAB's Phase II exhibit in the 1983 proceeding.
13 And clarifying that NAB represents Metromedia, the Metro-
14 media stations with respect to their syndicated programs,
15 and another letter dated September 29 also to Mr. Halperin,
16 that provides the information with respect to the pro-
17 grams broadcast by WCVB-TV which were syndicated and
18 broadcast by stations indicated and listing Miller's
19 Court among those programs, do you see that?

20 A Yes, I do.

21 Q Now, do you have any comparable documentation
22 that would suggest that Metromedia has authorized you to
23 represent it with respect to Miller's Court?

24 A We do.

25 Q Could you provide that for me, please?

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1 And, Mr. Lane, could you explain to me what that
2 is because I have asked for documentary evidence to that
3 effect, and I have not received any that addresses that
4 specific question.

5 MR. LANE: When did you ask for Miller's Court?
6 You asked for two shows, the Dance Show and Fight Back,
7 and you were provided with that. If you had asked us
8 for Miller's Court, we would have been happy to give it
9 to you. This is the first time we've ever seen this, and
10 I'd like to see what your documentation is and, if we're
11 going to put ours in the record, then I think we should
12 have a copy of yours.

13 MR. STEWART: I'd like to be provided with
14 yours, and I'll provide you with a copy of ours. Will
15 you do so, Mr. Lane?

16 MR. LANE: We'd be happy to do so, just as we
17 gave you copies of our representations for the Dance
18 Show and for Fight Back.

19 BY MR. STEWART:

20 Q So, it's your position, subject to our compari-
21 son of these documents, that MPAA represents not only
22 the syndicator but also the producer of the Miller's
23 Court program, is that what you're saying?

24 A That's correct.

25 Q With respect to the Dance Show -- and, Mr.

1 Chairman, I'd like to have counsel resolve that, or at
2 least submit the documentation that we've got for the
3 Tribunal so that will be in the record.

4 CHAIRMAN ARGETSINGER: How much time are you
5 talking about?

6 MR. STEWART: I think we're talking about
7 tomorrow.

8 MR. LANE: I was talking to someone else. I
9 didn't hear that.

10 CHAIRMAN ARGETSINGER: Can you provide that
11 for the Tribunal by tomorrow?

12 MR. STEWART: I'd like either to work that out
13 between counsel or to provide --

14 MR. LANE: I'd be happy to give it to the
15 Tribunal. If I could get it this afternoon, I'd be happy
16 to give it to you this afternoon. Had I know this --

17 THE WITNESS: Get the copy list and the
18 certification. They are both as a matter of record.
19 Metromedia supplied us, as we have testified earlier,
20 with a property list, and that property list includes
21 Miller's Court. With respect to Miller's Court, we had
22 number of hours that we had found in terms of distant
23 viewing. We reported this to Metromedia, and they have
24 certified to us that they are the proper party to receive
25 the royalties for Miller's Court. We have these documents

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1 and to the extent we can provide them without releasing
2 proprietary information, we'll be happy to do so.

3 BY MR. STEWART:

4 Q Mr. Cooper, for clarification, you are referring
5 to Metromedia Producers' Corporation?

6 A MPC.

7 Q And not Metromedia, Inc., which is the
8 licensee --

9 A I am referring to the claimant, Metromedia
10 Producers' Corporation, Mr. Stewart.

11 Q With respect to the Dance Show and Fight Back
12 with David -- let's do them one at a time. With respect
13 to the Dance Show, you represent the syndicator, we
14 represent the station-producer, and do you have any
15 reservations about that?

16 A None at all.

17 Q And this is all subject to the Tribunal's
18 decision about who gets the royalties for these programs,
19 but I just wanted to clarify where our disagreement was,
20 if any.

21 With respect to Fight Back --

22 MR. LANE: Could I make a request, Mr. Chairman,
23 of Mr. Stewart, since we have given him our documents
24 showing the bases for our representation of those shows,
25 that he provide that, and we will provide all the stuff

1 to the Tribunal.

2 CHAIRMAN ARGETSINGER: Yes, you may make that
3 request. Mr. Stewart?

4 MR. STEWART: I think I've got no problem with
5 that. I think Mr. Lane requested our authorizations in
6 the direct case phase of this, and we provided him with
7 the document, and I think we'll be happy to do that. I
8 haven't got them in front of me, so -- but we will endeavor
9 to do that.

10 BY MR. STEWART:

11 Q With respect to Fight Back with David Horowitz
12 on the NBC owned and operated stations, Mr. Cooper, we
13 represent NBC with respect to that program and you repre-
14 sent Paramount with respect to that program?

15 A That's correct.

16 Q Now, if you will turn to the second page of
17 this exhibit, I don't know if you've had time to check
18 the map, but assuming the map is correct, the conclusion
19 that there are 10.2 million viewing hours attributable
20 to the programs listed on the first page, the programs
21 listed in your R-11, produces a percentage of viewing of
22 0.43 percent?

23 A Percentage of -- the total of the three cate-
24 gories introduced, they did. Your mathematics is correct.
25 I don't accept your numbers.

1 Q Which numbers?

2 A Particularly with respect to the Dance Show.

3 Q And that's because of what, Mr. Cooper?

4 A Because I don't think that the Dance Show, to
5 any degree, belongs to your claimant.

6 Q And I want to be sure because we had a conversa-
7 tion yesterday about whether you would count viewing to
8 the stations that were in that supplement to Exhibit II-2
9 as opposed to the original II-2, but that's not what you
10 are saying at this point, is that right?

11 A No. I'm saying your exhibit is flawed also with
12 respect to the Dance Show. If you look at the first page
13 of your Exhibit II-8X, the figure that you have of
14 500,085 should have the same footnote indicating, too,
15 that it came from our Exhibit 4 that you apply to the
16 next show, and I don't know why you left that out.

17 Q Because apparently that 500,085 number was
18 taken from a printout that you provided us on December 1,
19 1986, the day before you testified. That was presented
20 in testimony yesterday.

21 A I won't argue about footnotes, Mr. Stewart.

22 Q Okay. I thought you were.

23 Subject to your dispute with whether we get
24 to count viewing for the Dance Show, Miller's Court and
25 Fight Back, a 0.43 number is virtually identical to the

1 viewing percentage that NAB represented programs had in
2 the 1983 Phase II proceeding, is that correct?

3 A I don't recall, Mr. Stewart.

4 Q You don't recall?

5 A No, I don't.

6 MR. STEWART: Mr. Chairman, I'd like now to
7 make two corrections in an exhibit that I submitted
8 yesterday, II-4X, which was the From the Editor's Desk
9 version of the exhibits having to do with ROSP or SPA
10 listings and, in particular, as Mr. Cooper pointed out,
11 the very first circle on the very first page of Exhibit
12 II-4X was erroneously added there, and because of Mr.
13 Cooper's testimony, the once promising career of a young
14 paralegal at our office has been snuffed out -- (laughter)
15 -- but we have worked on it further and I will report that
16 there are no other errors with respect to any of the
17 other circles, with one caveat, which is that with respect
18 to three stations -- KSPR, KSTS and KTXL -- those are
19 listed in the SPA, on pages from the SPA that we acci-
20 dentally omitted from the copies that we gave -- they
21 are the last pages of the February and May '84 SPA pages,
22 and we will provide those pages tomorrow so that they
23 will confirm the listings.

24 CHAIRMAN ARGETSINGER: Do you have a copy of
25 4X with you right now?

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1 MR. STEWART: I do.

2 CHAIRMAN ARGETSINGER: Oh, we have them from
3 yesterday? Oh, all right. Never mind, Mr. Stewart,
4 we've got them.

5 THE WITNESS: You might also want to correct
6 your correction. I think Mr. Stewart might also want to
7 correct his correction. On page 2 of this exhibit, he
8 has indicated an alternate call letter for WSYM as WSFL.

9 MR. STEWART: Which is a typographical error.

10 THE WITNESS: Yes, sir.

11 MR. STEWART: Good for you, Mr. Cooper.

12 THE WITNESS: Not good at all.

13 MR. STEWART: WFSL. By the way, the deletion
14 of the circle for KCIK does not change any of the numbers
15 that we have added on page 2 because KCIK was indicated
16 in the ROSP as broadcasting the program in May.

17 BY MR. STEWART:

18 Q Mr. Cooper, I assume that you have also taken
19 the opportunity overnight to review these documents with
20 a fine tooth comb. Other than what I've --

21 MR. LANE: Mr. Chairman, I'm going to object
22 to this question. There was cross-examination about these
23 exhibits yesterday, and this cross-examination was speci-
24 fically limited to Exhibit 8X, and I don't think there is
25 an opportunity for further cross on exhibits introduced

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1 prior.

2 MR. STEWART: I didn't get to finish my question,
3 which was whether Mr. Cooper had discovered any other
4 errors in the exhibit. If that counts as cross, so be it,
5 but it seems to me that he raised the issue yesterday
6 and should be able to tell me whatever other errors he's
7 found.

8 MR. LANE: Mr. Chairman, yesterday it was
9 agreed by myself and Mr. Stewart that we would have an
10 opportunity -- that you would keep the record open and
11 that we would provide whatever errors we could find with-
12 in a reasonable time, and we intend -- that's how we are
13 operating, and that's how we intended --

14 MR. STEWART: I withdraw my question, and I
15 appreciate that offer from counsel, and I have no further
16 questions for Mr. Cooper on cross-examination.

17 CHAIRMAN ARGETSINGER: Music, any questions?

18 MR. FABER: No, Mr. Chairman.

19 CHAIRMAN ARGETSINGER: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. LANE:

22 Q Mr. Cooper, we've just been referring to Exhibit
23 4X, and you recall yesterday that you were asked any
24 number of questions about Exhibit 4X through 7X, is that
25 correct?

1 A That's correct.

2 Q And as I've indicated, we intend to supply the
3 Tribunal with a written response of any errors or any
4 problems we find, is that correct?

5 A Yes, sir.

6 Q Mr. Cooper, would you turn to page 10 of your
7 written rebuttal.

8 A I have it, Mr. Lane.

9 Q Mr. Cooper, I want you to assume with me for
10 a moment, that everything NAB did was correct on these
11 exhibits, including KCIK.

12 Do you know if you took NAB's exhibit under
13 that assumption, what the percentages would be comparable
14 to the ones you've shown on page 10?

15 A Yes, I do, Mr. Lane.

16 Q Could you read those out loud to the Tribunal?

17 A Yes, sir. Going through the column that's
18 marked on my testimony at page 10, average "No" notations
19 per Period -- that's No in quotation marks -- the figure
20 for INN Midday News, making the assumptions that Mr. Lane
21 just set forth, that everything that NAB showed on their
22 exhibits was correct, the number of notations per period
23 for INN Midday News is 29.8 percent. In other words,
24 29.8 percent of the stations that were listed in the
25 Exhibit II for INN Midday News, according to NAB's exhibits,

1 did not carry that program.

2 For INN Evening News, the percentage is 29.1
3 percent. For From the Editor's Desk, the percentage is
4 24.5 percent. And for Wall Street Journal, it was 27.2
5 percent.

6 MR. STEWART: Excuse me. May I have a clarification
7 tion about whether you are reading the left-hand column
8 or the right-hand column?

9 THE WITNESS: I'm reading the column marked
10 Average "No" Notations Per Period, and I'm reading the
11 alternate figures which are now shown as, for example,
12 for INN Midday News at 57.5 percent based upon the ROSP
13 information, to 29.8 percent based upon the information
14 you have supplied in these Exhibits 4X, 5X, 6X and 7X.

15 MR. STEWART: Mr. Chairman, I think we're going
16 to get an unclear record here because Mr. Cooper's explanation
17 of what that meant, to have a 29 percent figure in
18 that column, that is that the stations listed in NAB's
19 Exhibit II-2 didn't broadcast, is not an accurate portrayal
20 of what that column was supposed to have been.

21 THE WITNESS: Those are uncontested Noes, all
22 right? Those are Noes that we showed in our exhibit,
23 which are not circled in Mr. Stewart's exhibit. That's
24 about the easiest explanation I can offer.

25 MR. STEWART: But as with respect to a particular

1 period the station did not broadcast it as reported in
2 the ROSP or SPA.

3 THE WITNESS: Mr. Stewart, I've just said
4 exactly what it is.

5 MR. STEWART: Fine. Thank you. I'm sorry
6 for interrupting.

7 THE WITNESS: Going to the next column of
8 figures which is the number of NAB II-2 stations with
9 zero listings -- that is no report of any carriage either
10 in ROSP or SPA, according to Mr. Stewart's exhibits
11 during any of the four periods -- for INN Midday News,
12 21.0 percent of the stations had zero listings; INN Even-
13 ing News is 15.0; From the Editor's Desk it is 13.5 per-
14 cent, and for Wall Street Journal, it is 14.6 percent.

15 MR. STEWART: Mr. Lane, I'm sorry to interrupt
16 again, but may I have a clarification about whether that
17 includes non-measured market stations, whether they were
18 counted?

19 MR. LANE: You mean your footnote?

20 MR. STEWART: No, whether the revised percent-
21 ages count stations for which there was no market measure-
22 ment as having zero listing or as having a listing.

23 THE WITNESS: It includes, Mr. Stewart, if I
24 can answer part of that question -- we have accepted
25 without any confirmation whatsoever, your references in

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1 these four exhibits to carriage of these four exhibits
2 to carriage of these four programs by the station in
3 Charlotte Amalie and the two Puerto Rican stations. We
4 have accepted those for this purpose.

5 MR. STEWART: Thank you.

6 BY MR. LANE:

7 Q In other words, just to make it clear, you have
8 accepted everything that NAB did on its Exhibit 4X through
9 7X?

10 A Everything.

11 Q And, for example, for WBNB every one of those
12 is circled, we didn't count that in calculating this
13 figure, did we?

14 A No, sir. Those are counted as having been
15 carried during the month in which it was circled.

16 Q Mr. Cooper, the range that we have here if we
17 take the two numbers, based on the assumptions that I
18 gave you and under which you answered, would that be
19 included in what you testified to on page 11 as part of
20 the understatements that was possible from use of the
21 ROSP numbers?

22 A Yes, Mr. Lane.

23 Q Mr. Cooper, yesterday do you recall being asked
24 questions about the Rose Parade program on KTTY?

25 A Yes, sir.

1 Q Do you recall being asked some questions
2 specifically about oral conversations, reports of which
3 you were given in discovery?

4 A Yes, sir.

5 MR. LANE: Mr. Chairman, as Exhibit 24X at this
6 time -- I guess it would be 24R -- I'd like to provide
7 a copy --

8 (Whereupon, the document was
9 marked Program Suppliers'
10 Exhibit No. R24 for identi-
11 fication.)

12 BY MR. LANE:

13 Q Mr. Cooper, is this a copy of the three pages
14 which you received from NAB as part of the discovery?
15 It's just been reduced by means of copying.

16 A This is material we received from NAB.

17 CHAIRMAN ARGETSINGER: Are there any private
18 telephone numbers on here?

19 (Laughter.)

20 BY MR. LANE:

21 Q Mr. Cooper, I'd like to refer you to page 2
22 of that Exhibit 24R, and do you see under the number 3,
23 there is a reference there to KTTY --

24 MR. STEWART: Is that the first page of the
25 exhibit?

1 MR. LANE: It's the page that has KTTV in the
2 middle next to the number 3, the words "Marian Gipti",
3 program coordinator. Do you see that, Mr. Cooper?

4 THE WITNESS: Yes, sir.

5 BY MR. LANE:

6 Q Is that the only reference on these notes of
7 oral conversations to KTTV, that you're aware of?

8 A Yes, sir.

9 Q Yesterday do you recall being -- first of all,
10 let me ask you, can you discern any reference to Rose
11 Parade within the notations related to KTTV?

12 A The only suggestion that they were dealing
13 with Rose Parade relates to the "check call letters
14 KLKK, KRIT". Yesterday during my testimony, I indicated
15 that in Exhibit II-2, with respect to Rose Parade, there
16 were four unidentifiable stations, two of which were KLKK
17 and KRIT. I think it is a fair assumption that this
18 reference here relates to Rose Parade.

19 Q And do you recall yesterday it was suggested
20 during your cross-examination, that the Exhibit II-2 was
21 the revised list that is suggested on this page?

22 A I never saw a revised list, and I assume that
23 at the time that Exhibit II-2 was prepared and distributed,
24 that that concluded the revised list.

25 Q But that was suggested to you -- it was

1 suggested, was it not, during your cross-examination,
2 that that was the revised list?

3 A Yes, sir.

4 Q And are the call letters -- do the call letters
5 KLKK and KRIT appear on Exhibit II-2?

6 A Yes, they do.

7 Q Is there any reference in Exhibit 24R that --
8 as to the treatment that should be given to the other
9 stations that you've identified as being included in one
10 place but not in the other?

11 A No. It seemed to be that the only checking that
12 was being done was with respect to KLKK and KRIT.

13 Q And there's no suggestion about any of the other
14 call letters which you've shown in your exhibit there
15 might be problems?

16 A No, there is nothing with respect to the addi-
17 tion -- nine additional call letters in the Exhibit II-2
18 listing over the material in the questionnaire. Let me
19 restate that, please.

20 There were nine additional call letters in
21 Exhibit II-2 that were not on the questionnaire. There
22 were two on the questionnaire that were not in Exhibit
23 II-2, so you have a net addition of seven, but there are
24 eleven stations that are just inconsistent between the
25 questionnaire and Exhibit II-2.

1 Q And there is no reference on Exhibit 24R to
2 those stations, except for the KLKK and KRIT?

3 A I have seen none.

4 Q Mr. Cooper, you've been asked a lot of ques-
5 tions about Exhibit R-11, have you not?

6 A Yes, sir.

7 Q Would you explain what the limitations, if you
8 will, of Exhibit R11 are?

9 A With respect to R11, as I testified yesterday,
10 we took the Exhibit II-2 as provided by NAB, with the
11 call letters and the titles of the programs as listed
12 in Exhibit II-2, and went through our data to determine
13 the number of household viewing hours that could be
14 attributed to those programs if we could find them, and
15 indicated No Show in the event we could not find a listing
16 that would confirm the data in Exhibit II-2.

17 Q So it was not intended to be a complete list
18 of all places in the Nielsen list that it did appear?

19 A No. This was the claim that NAB had set forth,
20 and we were neither going to add nor detract from it.

21 Q Do you recall being asked some questions yes-
22 terday concerning Miller's Court, with regard to the
23 viewing number that appeared on your Exhibit 4 and the
24 lack of numbers that appeared in R11?

25 A Yes, sir.

1 Q And have you done any further checking into
2 that situation?

3 A Yes, I have, Mr. Lane.

4 Q Could you set forth why viewing numbers appeared
5 for Miller's Court in Exhibit 4 but not in R11?

6 A The Exhibit II-2 listing for Miller's Court,
7 as item 18 in Exhibit II-2, listed the call letters of
8 two stations, WCVB and WTTG. Neither WCVB nor WTTG were
9 stations included in the Special Study sample in 1984.
10 However, the figures that we did show for Miller's Court
11 were based upon the carriage and broadcast and retrans-
12 mission of Miller's Court as broadcast by two stations
13 that were in the sample, specifically, WFLD in Chicago
14 and WNEW in New York.

15 Q Mr. Cooper, isn't it true that you recommended
16 .4 percent for NAB as part of your rebuttal testimony?

17 A Yes, sir. The figure we actually came up with
18 was somewhat less, 0.37. In my magnanimity I offered
19 0.4 as a gauge for the Tribunal's decision.

20 Q And, Mr. Cooper, isn't it true that NAB Exhibit
21 II-8X came up with a number of .43 percent as their
22 viewing figure?

23 A That's correct.

24 Q And isn't it true that .4 is the midpoint
25 between the .37 and .43?

1 A It is precisely the midpoint between those two
2 figures.

3 Q Mr. Cooper, you were asked some questions this
4 morning, or you were given an exhibit, I should say,
5 concerning a program, a Multimedia program entitled
6 Behind the Scenes, do you recall that?

7 A Yes, I do.

8 Q And I'm referring specifically to Multimedia
9 Exhibit 10X in which there were identified certain stations,
10 dates and times of broadcasts for this program. Would you
11 pull out that exhibit?

12 A The program Behind the Scenes?

13 Q Yes. Have you had a chance to review the
14 material, the Nielsen material, to determine whether the
15 Nielsen material picked up the broadcast Behind the Scenes
16 on the stations listed in Multimedia Exhibit 10X?

17 A It picked them up in all instances, with the
18 exception of KMOL. It was not specifically shown as
19 Behind the Scenes. However, for KMOL, in one of the
20 exhibits Mr. Lutzker introduced earlier today, you will
21 find a listing for America Comes Alive which was an
22 omnibus title, which included the Behind the Scenes program.

23 Q So in other words, if you count KMOL's omnibus
24 title, that Behind the Scenes appeared in every program
25 if you assume that that particular broadcast of America

1 Comes Alive is Behind the Scenes?

2 A There are two other statements I need to make
3 about this exhibit, Mr. Lane. One, we did not find a
4 listing for WWLP corresponding to that September 29
5 broadcast date. The reason for that, the September 29
6 broadcast date was in the October measurement period,
7 and WWLP was not -- not -- measured in October and,
8 therefore, we would not have such data for that station.

9 Also, our data for Behind the Scenes shows
10 carriage of Behind the Scenes by station WTOV in Steuben-
11 ville, Ohio, which was not included on this 10X.

12 Q Mr. Cooper, do you recall being asked this
13 morning some questions about what the effect -- what is
14 your judgment as to the effect --

15 MR. LUTZKER: Mr. Chairman, if I could -- I'll
16 address this to counsel. Will you provide me with the
17 data material, since that was part of our discovery re-
18 quest?

19 MR. LANE: If you walk over here, you can have
20 it now.

21 THE WITNESS: That's about as fast as you can
22 do it.

23 BY MR. LANE:

24 Q Mr. Cooper, do you recall being asked some
25 questions about your judgment as to the effect of the

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1 inclusion or exclusion of WBBM from the list of sample
2 stations, with specific regard to the Donahue program?

3 A Yes, sir.

4 Q Have you had an opportunity to look in the
5 1983 proceeding where WBBM was one of the sample stations,
6 to identify what that effect was in that year?

7 A During the recess, I was able to get hold of
8 the Nielsen report for May, 1983 and analyze the data
9 there for the Donahue Show. As Mr. Lane has just stated,
10 WBBM was included in the sample of stations that consti-
11 tuted the sample in 1983.

12 MR. LANE: Just for the sake of simplicity,
13 Mr. Chairman, we have put together an exhibit which
14 identifies the stations which carried Donahue in 1983
15 and has broken down the number of household viewing hours,
16 and I'd ask that that be marked as Program Suppliers'
17 Exhibit 25R -- R25.

18 (Whereupon, the document was
19 marked Program Suppliers'
20 Exhibit No. R25 for iden-
21 tification.)

22 BY MR. LANE:

23 Q Mr. Cooper, would you just summarize what's
24 in Exhibit R25?

25 A Yes. With respect to each of the stations

1 that broadcast Donahue during May of 1983, the Nielsen
2 report showed the average number of quarterhours per
3 episode for each station.

4 This exhibit that we have just introduced
5 provides the averages, the figures for each of the
6 stations that carried the Donahue program during May,
7 1983 and were part of the sample.

8 At the bottom of the column marked Average
9 Quarterhour Households, I have totaled the number of
10 households for those -- I think there are 19 or 20 stations
11 listed. WBBM, which is separately set forth on that
12 page, accounted -- the household viewing hours of WBBM
13 accounted for 2 percent of the total for Donahue in May,
14 1983.

15 Q Mr. Cooper, would you refer to your Exhibit R2.
16 My question is, do you recall being asked questions about
17 this this morning?

18 A Yes, sir.

19 Q And, specifically, you were asked questions
20 about the percentage increase of Donahue as compared
21 to the MPAA represented claims in all syndicated programs,
22 is that correct?

23 A That's correct.

24 Q In looking at that, do you think it would be
25 useful to determine what percentage Donahue represents

1 of the MPAA represented programs or all syndicated pro-
2 grams over the years?

3 A I believe it's very informative.

4 Q Would you provide us with those numbers?

5 A Yes. In 1981, the Donahue Show's hours of
6 10.6 million accounted for .8 of 1 percent of the total
7 for either all syndicated programs or the MPAA claimant
8 programs.

9 In 1984, the Donahue Show accounted for .2 of
10 1 percent of the hours for all syndicated programs and
11 likewise for all MPAA claimant programs. In other words,
12 a decline of from .8 of 1 percent to .2 of 1 percent over
13 those years, for the Donahue Show, indicating very clearly,
14 in my view, the relative insignificance of Donahue versus
15 other syndicated programs in 1984.

16 MR. LANE: Those are all the questions I have
17 on redirect, Mr. Chairman.

18 CHAIRMAN ARGETSINGER: Thank you, Mr. Cooper.

19 THE WITNESS: It was my pleasure, Mr. Chairman.

20 (Whereupon, the witness was excused.)

21 MR. LANE: Mr. Cooper has another first, the
22 first witness under your reign.

23 CHAIRMAN ARGETSINGER: That's very nice. I'll
24 remember this.

25 MR. GARRETT: That's excluding the testimony

1 offered by counsel, Mr. Chairman.

2 CHAIRMAN ARGETSINGER: I was wondering who the
3 counsel was sometimes.

4 We'll take about a four-minute recess and then,
5 Mr. Lane, will Ms. Kessler be --

6 MR. LANE: She's prepared to begin, Mr.
7 Chairman.

8 (Whereupon, a short recess was taken.)

9 CHAIRMAN ARGETSINGER: Back on the record.

10 Mr. Lane, are you ready with your next witness?

11 MR. LANE: Yes. I call Ms. Marsha E. Kessler
12 to the stand.

13 Whereupon,

14 MARSHA E. KESSLER

15 was called as a witness and, having first been duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LANE:

19 Q Would you state your name for the record?

20 A Marsha E. Kessler.

21 Q Are you the same Marsha E. Kessler who presented
22 direct testimony and exhibits in this proceeding?

23 A I am.

24 Q Did you review the direct case of Multimedia
25 and the factual statements proffered by NAB in this

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1 proceeding?

2 A Yes, I did.

3 Q And did you prepare a document entitled Rebuttal
4 Testimony of Marsha E. Kessler and put together Exhibits
5 R15 through R22?

6 A I did.

7 Q Do you have any corrections to that testimony
8 or to those exhibits?

9 A I have one typo correction and one correction
10 to an exhibit. The typo is on the first page of the
11 written testimony, the third line from the bottom. The
12 word "program" should be plural, and the exhibit correc-
13 tion is Exhibit R15, on the last page, the footnotes,
14 beginning with Footnote 2, the correct notation should
15 be Multimedia 1981 Exhibit 2. Footnote number 3 should
16 be Multimedia 1982 Exhibit 3. Footnote number 4, Multi-
17 media 1983 Exhibit 11, and Footnote number 5, Multimedia
18 1984 Exhibit 13. Other than that, I have no additions
19 or corrections.

20 MR. LANE: Mr. Chairman, I believe that Ms.
21 Kessler's qualifications were gone into extensively in
22 the direct, and I don't propose to repeat that unless
23 the Tribunal wishes.

24 CHAIRMAN ARGETSINGER: Do any of the counsel
25 have any questions on that? Mr. Garrett?

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1 VOIR DIRE

2 BY MR. GARRETT:

3 Q Hello, Marsha.

4 A Bob.

5 Q Marsha, let me ask you, first of all, to turn
6 to your Exhibit R16, do you have that there before you?

7 A I do.

8 Q This is a stipulation entered into among MPAA,
9 NAB and Turner in the 1983 cable royalty distribution
10 proceeding?

11 A That's right.

12 Q And it's dated December 18, 1985, correct?

13 A That's true.

14 Q When did you first see that stipulation?

15 A I don't remember.

16 Q Was it before or after December 18, 1985?

17 A It couldn't have been before.

18 Q It was sometime after?

19 A Right.

20 Q Few days after? Couple of weeks after?

21 A I truly do not remember.

22 Q Marsha, were you involved in any of the negotia-
23 tions that were held among MPAA, NAB and Turner leading
24 up to that stipulation?

25 A I was not.

1 Q Did you consult -- incidentally, you are not
2 a signatory to that stipulation, are you?

3 A I am not.

4 Q It is signed on behalf of MPAA by Arthur
5 Scheiner, counsel, correct?

6 A There are two final pages. The first final
7 page is signed by Mr. Scheiner, the second one on my copy
8 is not.

9 Q Did you consult with Mr. Scheiner at anytime
10 prior to December 18, 1985 concerning this stipulation?

11 A I don't recall that I did.

12 Q Did you consult with either Turner -- I'm sorry
13 -- did you consult with anybody representing Turner
14 Broadcasting System concerning the stipulation?

15 A I don't believe I was involved in any way with
16 the stipulation.

17 Q In no way whatsoever?

18 A I don't think I was.

19 MR. LANE: Could I ask a clarifying question?
20 Does counsel mean with the formulation of the stipulation
21 or with the underlying subject matter?

22 MR. GARRETT: With the stipulation, regarding
23 the stipulation. Does that clarify it for you, Dennis?

24 MR. LANE: No, because I think -- if I may be
25 allowed to ask Ms. Kessler if she is aware and was aware

1 at that time, of the underlying subject matter of the
2 stipulation.

3 THE WITNESS: Yes, I was.

4 MR. LANE: And you were actively consulted
5 prior to the December 18 date about the World Championship
6 Wrestling programs?

7 THE WITNESS: I was aware of the issue of Minor
8 Sports and the wrestling on WTBS, yes.

9 MR. GARRETT: Mr. Chairman, if the Tribunal
10 allows Mr. Lane to ask questions in the middle of my
11 voir dire, that is certainly within the Tribunal's province
12 to do so. I do think, however, the proper procedure is
13 for Mr. Lane to ask questions at the appropriate time
14 and that is not --

15 CHAIRMAN ARGETSINGER: I agree, but you were
16 silent and -- I'm glad you spoke up.

17 MR. LANE: Mr. Chairman, I asked for a clarification
18 and he asked me if that clarified and it didn't, and
19 I suggest that my questions clarified the problem that
20 was not previously clarified. I have no intention of
21 breaking into voir dire except where I think that the
22 record is unclear and in a confused state.

23 MR. GARRETT: I think there is an appropriate
24 time to do it, but I'll let it pass. Let me go back
25 again.

1 BY MR. GARRETT:

2 Q You were not involved in the preparation of
3 that stipulation, is that correct?

4 A That's correct.

5 Q You were not involved in any of the negotiations
6 that led up to the stipulation, among the various counsel
7 for TBS, MPAA and NAB, correct?

8 A I was not present at any meeting among the
9 parties.

10 Q You do have knowledge, however, of the underly-
11 ing subject matter here, which is the proper classification
12 of the programming?

13 A Yes, I do.

14 Q And in your responses to Mr. Lane's questions,
15 were you intending to indicate that you have knowledge
16 of anything other than the underlying categorizations
17 of this programming with specific regard to this stipula-
18 tion?

19 A Would you ask the question again, please?

20 Q I don't think I could possibly.

21 (Laughter.)

22 COMMISSIONER RAY: Maybe Mr. Lane will ask it
23 for you.

24 (Laughter.)

25 MR. GARRETT: I won't hold my breath.

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1 BY MR. GARRETT;

2 Q What did you mean to tell Dennis in response
3 to the questions he asked during my voir dire? What
4 was the substance of your response to Dennis a few minutes
5 ago?

6 A His question recalled to me the time that the
7 parties spent grappling over the Minor Sports and wrestling
8 issue. During the time that was going on, I know I spent
9 time going through TV Guides, looking at the Nielsen
10 data -- is this the kind of information you're looking
11 for?

12 Q I just want to know what you told Dennis a few
13 moments ago. I was so busy being mad I didn't hear you.

14 A I think that's my response.

15 Q Okay. Let me ask you to -- well, I guess we
16 can skip R17, that's the Tribunal's order, is it not?

17 A Yes, it is.

18 Q And we all know what role you would have played
19 with respect to that order. What about Exhibit R18?

20 A The role I played?

21 Q Just strike that. Just turn to Exhibit R18.
22 Now, this is an affidavit of Robert Ross of Turner Broad-
23 casting System?

24 A Yes, it is.

25 Q Did Mr. Ross consult with you prior to the time

1 that he executed this affidavit concerning the subject
2 matter of the affidavit?

3 A Mr. Ross and I held several conversations prior
4 to the first or second week in January of 1986, with ,
5 respect to programs that WTBS or Turner Broadcasting had
6 received credit for and which they indicated they should
7 not have. Where this happened in time other than it
8 happened sometime prior to the first or second week in
9 January, 1986, I cannot pinpoint.

10 Q Well, this affidavit, Marsha, that appears at
11 Exhibit R18, is dated in November, 1985. Did you have
12 any -- did Mr. Ross consult with you at any point prior
13 to November 1st, 1985, concerning the preparation of
14 this affidavit?

15 A I cannot honestly tell you that he did or did
16 not. I know we have discussed these programs. I can't
17 pinpoint in time when those discussions took place other
18 than what I've already said.

19 Q Okay. What role, if any, did you play in the
20 formulation of this affidavit which is included in Exhibit
21 R18?

22 A I did not take part in any -- I did not prepare
23 this affidavit and I did not participate in it in any way
24 that I'm aware of.

25 Q And you have the same answer with regard to

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1 Exhibit R19, which is also an affidavit of Robert Ross,
2 Turner Broadcasting, dated November 22nd, 1985?

3 A What is the question, again?

4 Q What role did you play in connection with the
5 formulation or the preparation of the affidavit contained
6 here in Exhibit R19?

7 A None.

8 Q Marsha, your Exhibits R20 and R21 are copies of
9 letters from NAB's counsel to the Tribunal, and I assume
10 that you also had no role in the formulation of those
11 letters?

12 A No.

13 Q Now, Marsha, as I understand your testimony
14 here that surrounds Exhibits R16 through R21, you intend
15 to testify as to the meanings that might be attributed
16 to those documents, the inferences that might be drawn
17 from those documents, what those documents are concerned
18 with, is that correct?

19 A I don't think I would say it that way. I think
20 that I would point out information in these various docu-
21 ments that I think is pertinent to the discussion that
22 will take place here today.

23 Q Now, you say, for example, on page 3 of your
24 testimony referencing Exhibit R17, that that document
25 makes no reference to Night Tracks and "no inferences

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1 about Night Tracks can be appropriately drawn from these
2 documents", correct?

3 A I don't see where you are, Bob.

4 Q I'm sorry, Marsha, it's the page 3 at the top ,
5 the second and third lines at the top.

6 A Okay. Now --

7 Q Do you see that now?

8 A Yes.

9 Q You do intend to testify to the Tribunal as to
10 the appropriate inferences that may be drawn from these
11 documents, is that not correct?

12 A That's true.

13 Q Marsha, do you feel that you are qualified to
14 testify before the Tribunal as to what inferences may be
15 drawn from documents which you had absolutely no role in
16 preparing?

17 A I believe that I can read as well as or better
18 than most people in this room. I know that I can read
19 a document and see what information is contained in it
20 and what information is not contained in it.

21 The testimony that I intend to give today has
22 nothing to do with the opinions of anyone expressed in
23 the documents and these exhibits. What I intend to show
24 today is that the underlying purportedly factual statements
25 may have more to them than meets the eye and require

1 additional attention, which is what I propose to do.

2 Q You intend to testify as to what these documents
3 may or may not mean, correct?

4 A That's true.

5 Q Let me ask you again, do you feel that you are
6 qualified to present such testimony as to what documents
7 in which you had no role in preparing, may or may not
8 mean?

9 A I think I am very qualified to do that.

10 Q Do you think you are anymore qualified than
11 anybody else in this room, Marsha?

12 A No, I'd say we're probably all equally qualified.

13 Q We're all equal.

14 A Yes.

15 MR. GARRETT: I have no further questions,
16 Mr. Chairman.

17 CHAIRMAN ARGETSINGER: Mr. Lane?

18 DIRECT EXAMINATION (Resumed)

19 BY MR. LANE:

20 Q Ms. Kessler, would you turn to page 1 of your
21 rebuttal testimony. Would you summarize briefly Multi-
22 media's testimony in this proceeding with regard to its
23 1984 specials?

24 A In his testimony in the direct case, Mr. Thrall,
25 Multimedia's witness, indicated that the specials had

1 reached a considerably higher aggregate broadcast audience,
2 and because they had reached a higher cumulative audience
3 they should receive a higher share.

4 Q And do you agree that in 1984, the aggregate
5 broadcast audience for Multimedia was larger than the
6 aggregate broadcast audience in 1983, for Multimedia
7 specials?

8 A I do. They increased their number of programs,
9 so it is expected that the cumulative audience that those
10 specials would have would increase.

11 Q Do you think that reliance should be placed
12 on the increased aggregate broadcast audience?

13 A I don't believe that it should.

14 Q And why is that?

15 A I think that using a cumulative audience can
16 distort the data or it can give an unrealistic impression
17 of the ability of the specials to attract audience.

18 Q Was the increase in aggregate broadcast audience
19 in 1984 proportionate to the increased number of Multi-
20 media specials in 1984?

21 A No, I would say it was disproportionate. The
22 number of programs, the increase in the number of programs
23 between 1983 and 1984 was an increase of almost 53 percent,
24 52.9, however, the audience that that increased programs
25 brought in was only 6.1 percent.

1 Q Do you think that there is a better way of
2 analyzing these data?

3 A Yes, I do.

4 Q And would you tell the Tribunal what that way
5 is?

6 A I think it's more realistic to look at the
7 specials on the whole, on the average --in other words,
8 an average per special as opposed to a cumulative figure.
9 I think there are two advantages to doing that. One,
10 you eliminate the distortion that you have when you have
11 this cumulative audience. Likewise, you also have a
12 better way of comparing the ability of the specials to
13 attract audience from one year to the next, say, from
14 1983 to 1984.

15 Q Did you prepare an exhibit which has a per
16 program audience measurement?

17 A Yes, I did.

18 Q And is that your Exhibit R15?

19 A Yes, it is.

20 Q Turning to that exhibit and for the moment
21 passing over the summary page, would you explain how you
22 went about preparing this exhibit?

23 A As the footnotes indicate, using Multimedia
24 exhibits, I made a listing of the country music specials
25 that were available during each year, and I would note

1 that the listing also includes repeats of the same pro-
2 gram.

3 After listing the individual programs and the
4 specials, I put the rating figure in a left-hand column
5 and the audience figures in the right-hand column. Then
6 for each year I did two things. I did a cumulative total,
7 which you can see at the bottom of -- well, actually, at
8 the top of the final page, and then I took an average for
9 the period.

10 Q So, just referring to the third page, the total
11 of 68.0 is the sum of all the ratings for the four 1980
12 programs, is that accurate?

13 A That's right, that's the sum of the ratings for
14 the Music City News Awards, for Chet Atkins, Hank Williams
15 and the Hank Williams repeats.

16 Q And likewise the 52 million number under Audience
17 is the sum of the audiences for those individual programs?

18 A That's right.

19 Q And underneath that, you have provided the
20 average just the 1980 year?

21 A That's right. What I did was I took the total
22 figure and divided by 4 for four programs, and that's
23 the average.

24 Q And then just going across the page, the next
25 rating and audience figures are for 1981 and so forth

1 down to 1984, is that accurate?

2 A Yes, that's right.

3 Q And turning back now to the first page, to the
4 summary page, does this simply copy the average rating
5 and average audience figures from the last page of your
6 exhibit?

7 A Yes, it is. This is a table that compares
8 the years 1980 through 1984, and the first and fourth
9 lines are figures taken directly from the last page of
10 the underlying data.

11 Q And just focusing on the top half of the sum-
12 mary page with regard to the average rating, would you
13 describe what the percentage figures are in the second
14 and third lines?

15 A For the first line of data, the average rating,
16 I performed two calculations. The first one was to do
17 a percentage change, percentage decline from one year to
18 the next, beginning with the difference between 1980 and
19 1981 and finishing with the difference of 1983, between
20 1984.

21 Then the third line is the percentage decline
22 from what I call the base year, 1980.

23 Q And is it true that you repeated the same
24 process with regard to the average audience figures on
25 the bottom half of that summary page?

1 A That's right.

2 Q Now, I want to focus your attention specifically
3 on the year 1983. Is it accurate that the zero means
4 that for all intents and purposes there is no decline
5 in the rating between 1982 and 1983?

6 A That's right. If you look at them, they both
7 computed to 10.8 percent, so there was no decline in the
8 movement from 1982 to 1983.

9 Q And if you look at it for the change from 1982
10 to 1983 with regard to the audience, there was actually
11 a slight increase, was there not?

12 A There was a slight increase of 1.1 percent.

13 Q Now, let's focus in on the difference between
14 1983 and 1984. Would you identify -- it's accurate, is
15 it not, that between 1983 and 1984, the average rating
16 dropped by over 31 percent?

17 A That's right. The decline from '83 to '84 was
18 almost 32 percent, or 31.5 percent.

19 Q And that just as the decline from the 1983 to
20 1984, it's not a cumulative decline?

21 A That's true.

22 Q And likewise with regard to audience, there
23 was a decline from 1983 to 1984 of slightly over 30
24 percent?

25 A That's right. The decline was 30.6 percent.

1 Q And, again, that's not a cumulative, that's
2 just from the one year to the next?

3 A That's right.

4 Q Do you consider the drop or the decline in the
5 ratings in audience from 1983 to 1984 of the Multimedia
6 specials to be substantial?

7 A In my opinion, they are.

8 Q In your opinion, do broadcast ratings and
9 audience figures such as has been set forth in the Multi-
10 media exhibits and reproduced on your exhibit and used
11 for this, have any value to the Tribunal's deliberation?

12 A In my judgment, they have no value.

13 Q So, would you explain what value you think this
14 exhibit has to the Tribunal?

15 A The value this exhibit has is that it has taken
16 data presented by Multimedia and, in my opinion, presented
17 it in a way that allows you to make a more realistic
18 assessment of the ability of the specials to draw audience
19 from one year to the next, specifically, from 1983 to 1984.

20 Q So, is it fair to say that this is a way of
21 comparing Multimedia specials against Multimedia specials
22 each year?

23 A That's right because when you do it on an
24 average per special, you do have the ability to compare,
25 as it were, one program against the next, or one year's

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1 worth of programs against a following year.

2 Q I'd like to turn now, Ms. Kessler, to the NAB
3 portion of your testimony. Did NAB reference certain
4 documents in its Phase II statement regarding the Warner
5 claim?

6 A Yes, they did. In their Phase II statement
7 regarding Warner's claim for music videos, they reference
8 the stipulation already referred to by Mr. Garrett shown
9 as my Exhibit R16, and the Tribunal's order of February,
10 1986 shown as my Exhibit 17.

11 Q And have you reviewed these documents and
12 other documents submitted in the 1983 proceeding which
13 address this same point?

14 A Yes, I have.

15 Q And turning to your Exhibit R18, would you
16 identify that, please?

17 A R18 is an affidavit dated the 1st of November
18 1985 by Robert Ross, who is Vice President and General
19 Counsel of Turner Broadcasting, Inc.

20 Q Ms. Kessler, is there any reference in that
21 Exhibit R18 that -- to the effect, and I quote from NAB's
22 statement -- "All of the programs owned by TBS that MPAA
23 classified are Syndicated but which should have been
24 classified as Local" were identified in that document?

25 A My answer to that question is no, and the reason

1 that I say no is because if you look on the second page
2 at paragraph 7 of the stipulation, the sentence specifically
3 begins with the phrase "Among the other Local programs
4 that were broadcast on WTBS", et cetera.

5 I believe the use of the qualifying language
6 indicates this is not the sole -- this is not a complete
7 list.

8 Q Would you identify Exhibit R19?

9 A R19 is also an affidavit dated November 22,
10 1985 from Robert Ross.

11 Q Is there any reference in that affidavit to
12 anything other than wrestling programs?

13 A This affidavit addresses wrestling programs
14 solely.

15 Q Is there any reference in this affidavit to
16 MPAA categorization?

17 A No, there is not.

18 Q Would you identify Exhibit R20?

19 A R20 is a letter dated November 7, 1985 to
20 Chairman Ray from counsel for NAB.

21 Q Does this make reference to anything other
22 than wrestling programs?

23 A There is no reference to anything in here
24 except to wrestling.

25 Q Is there any reference to MPAA categorization?

1 A The only reference to MPAA is that MPAA refused
2 to pay royalties to WTBS for its wrestling programs, but
3 there is no reference to categorization.

4 Q Would you identify Exhibit R21, please?

5 A R21 is a letter dated November 22, 1985 to
6 Chairman Ray from counsel for NAB.

7 Q Does it address any issue but Minor Sports
8 and wrestling programs on WTBS?

9 A The issues in the letter all relate to Minor
10 Sports and wrestling on WTBS.

11 Q Now, if you look back to your Exhibit R16,
12 which is the first affidavit of Mr. Ross, is it not?

13 A R16 is the stipulation.

14 Q I'm sorry, the stipulation. She can read better
15 than I can.

16 (Laughter.)

17 A I have it here.

18 Q Is there anything in this stipulation which
19 suggests it is intended to list all of the programs owned
20 by WTBS that MPAA has classified as Syndicated but which
21 should have been classified as Local?

22 A The answer is no, with the following observa-
23 tions, one that I've made previously with respect to one
24 of the affidavits. If you look at paragraph 11 of the
25 stipulation, the opening sentence begins "The following

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1 programs, among others, were broadcast during 1983 on
2 WTBS", et cetera, et cetera, and then it lists, I believe,
3 eight programs and a ninth was added later on.

4 I would also call attention to the 17th para-
5 graph of the stipulation when Mr. Ross indicates that had
6 he testified before the Tribunal he would have indicated
7 "that he has had no explicit knowledge of the definition
8 of Local programming or Minor Sports programming as used
9 in the Nielsen Special Study categorization of programming".

10 Q Ms. Kessler, referring to all the exhibits from
11 R16 and including -- through and including R21, were these
12 all presented before TBS notified MPAA that it should not
13 receive credit for the Night Tracks program?

14 A That's true. As I've indicated, it was sometime
15 during the first or second week of January of 1986 that
16 Mr. Ross indicated to me in correspondence that money
17 had been paid to Turner Broadcasting for Night Tracks,
18 and that they could not accept the payment.

19 All of these documents were produced in the
20 months of November and December prior to that time when
21 Night Tracks was not an issue. The issue during the
22 creation of all of this paper was Minor Sports and
23 wrestling on WTBS.

24 Q Ms. Kessler, to turn to a separate issue, could
25 you briefly identify what your understanding of NAB

1 Exhibit II-2 is?

2 A NAB's Exhibit II-2, as I understand it, is a
3 listing of the series and specials for which it can claim
4 entitlement in these proceedings.

5 Q Did you request a search of the Copyright Office
6 files for copyrights on the programs listed in that
7 exhibit?

8 A Yes, I did.

9 Q And is R22 a copy of your letter requesting
10 that search and the response from the Copyright Office?

11 A Yes, that's what it is.

12 Q And would you summarize what the response
13 indicates?

14 A The response indicates that of the 130 or
15 thereabouts programs that are listed in NAB's Exhibit
16 II-2, only 11 of them had possible copyright registra-
17 tions.

18 MR. LANE: Those are all the questions that
19 I have on direct, Mr. Chairman.

20 CHAIRMAN ARGETSINGER: Will there be any cross?

21 MR. STEWART: Yes.

22 CROSS-EXAMINATION

23 BY MR. STEWART:

24 Q Good afternoon, Marsha.

25 A Good afternoon, John.

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1 Q Can you tell me who selected the documents that
2 you've presented as Exhibits R16 through R21?

3 A As I recall, I had a number of them in my files
4 and Mr. Lane provided me with some of them.

5 Q Who decided which ones to present to the
6 Tribunal?

7 A I think jointly, we did.

8 Q Who wrote the circles and other marks on the
9 documents that you've presented, was that you or was it
10 counsel?

11 A What circle are you referring to?

12 Q Well, you circled the "among the other programs"
13 language each time it appears.

14 A Those are my circles.

15 Q Now, isn't it true, Ms. Kessler, that you could
16 have found hundreds of documents that didn't mention the
17 Night Tracks program in the files of the 1983 proceeding?

18 A That's a rhetorical question. Rhetorically,
19 the answer is, yes, I could have.

20 Q Of course. If you show the Tribunal a letter
21 that had to do with some specific facts about the wrestling
22 program and say that didn't mention Night Tracks, that
23 doesn't prove anything at all, does it?

24 A The importance of these documents, in my opin-
25 ion, is that they are being used to support what I believe

1 is your position, that Night Tracks should not be included
2 as a Local program, i.e., should not be charged to the
3 category.

4 Insofar as your Phase II statement, I under-
5 stand it's an opinion of counsel. I don't have any
6 problem with an opinion. You and I obviously have a
7 difference of opinion and that's why we are here. How-
8 ever, the documents that were referenced in your Phase
9 II statement as well as other correspondence that dealt
10 with the issues that were going on here at the Tribunal
11 at that time, I believe are very relevant. And when you
12 make a statement saying that Mr. Ross intended to come
13 in here and address MPAA categorization, or that he was
14 going to list all the programs, I, of course, am going
15 to look for all the documentation that I can find to
16 see whether or not that's true. In my opinion, it is
17 not true.

18 Q Do you have any knowledge at all about the
19 communications between NAB and Turner with respect to
20 the preparation of these documents?

21 A I knew communications were happening, I did
22 not know the substance of them.

23 Q Do you know whether NAB asked Turner expressly
24 to mark up CRT Exhibit Number 2, which was the MPAA
25 printout, and tell NAB every single program that was

1 listed as Syndicated but should have been categorized as
2 Local?

3 A I have no knowledge about that.

4 Q Do you have any knowledge at all about the
5 preparation of NAB's rebuttal case in the 1983 proceeding?

6 A No.

7 Q All these documents that you have presented
8 were submitted in the course of the rebuttal phase --
9 I'm sorry -- as part of NAB's rebuttal case in the 1983
10 Phase I proceeding, is that correct?

11 A If you tell me it is, I will agree with you.

12 Q You don't know that? Have you read NAB's 1983
13 Phase I rebuttal case?

14 A I may have read portions of it.

15 Q Now, this is kind of fun.

16 A I get scared when you say that, John.

17 Q Well, you are rebutting specifically the
18 Phase II statement of the National Association of
19 Broadcasters regarding claim of Warner Communications,
20 Inc. that was filed with the Tribunal on October 2, 1986,
21 is that right?

22 A No, that's not right.

23 Q What is it that you are rebutting?

24 A I am rebutting the use of some of the documents
25 within that statement, and I am taking exception to the

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1 way they were used.

2 Q But we are now talking about a different document.
3 That's the document we're talking about. The reason I
4 said it was fun is because I wrote that and signed it,
5 so I want to find out where the differences arise, and
6 I'm reading from page 3 of that statement.

7 A Of your Phase II statement?

8 Q Yes. That is the document that you're rebutting,
9 right?

10 A Yes.

11 Q The Night Tracks program was -- and I'm quoting
12 now -- "expressly classified as a Syndicated program by
13 MPAA and that undisputed classification was brought to the
14 attention of the Tribunal in the 1983 Phase I proceeding".

15 A You and I have already talked about this, Mr.
16 Stewart, in our direct case.

17 Q Yes. Let me ask you a question. Do you dis-
18 agree with that statement?

19 A Yes, I do.

20 Q In what respect?

21 A I agree completely that Night Tracks was pre-
22 liminarily categorized as a Syndicated program, and that
23 MPAA presented evidence that included Night Tracks as
24 a Syndicated program as part of its 1983 case. However,
25 as I have also told you, we realized after Mr. Ross

1 contacted us that that was an error.

2 We have returned money to Mr. Ross for Night
3 Tracks, and we consider the program to be a Locally-
4 produced program.

5 Q Okay. But, again, to this statement, it was
6 expressly classified as a Syndicated program by MPAA,
7 and that undisputed classification was brought to the
8 attention of the Tribunal in the 1983 Phase I proceeding,
9 isn't that correct?

10 A I don't think it was undisputed.

11 Q I'm sorry. Before the January, 1986 letter
12 that you received, or before your conversations in January
13 of 1986 with Mr. Ross, it was not disputed, isn't that
14 correct?

15 A There was no reason to.

16 Q There was no reason to. All right. I'll get
17 back to that. And then skipping over the sentence in
18 which the stipulations are cited, and that's the one I
19 want to come back to -- Night Tracks was not among the
20 programs listed in the stipulations. That's clear because
21 that is, in fact, the point of your testimony here.

22 A That's right.

23 Q So you don't disagree with that. Thus, when
24 the Tribunal made its Phase I allocation for 1983, it
25 was absolutely clear that MPAA, NAB, WTBS and all other

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1 parties considered the Night Tracks music video programs
2 to be a part of the Program Suppliers' award and not the
3 commercial television award. Do you agree with that
4 statement?

5 MR. LANE: Mr. Chairman, I'm going to object
6 to these questions. I understand what Mr. Stewart is
7 doing. I've let a few go by, but this was the entire
8 subject matter of Ms. Kessler's direct, and he went over
9 this -- Mr. Stewart crossed her for several hours precisely
10 on the point which he is just raising -- was it part of
11 the Tribunal's 1981 Phase I decision, and the same issues.

12 I didn't object in the first couple of questions
13 because I thought maybe he was going to lead in, but I
14 just don't see any reason to repeat what we went over
15 with several hours during the direct.

16 MR. STEWART: This is very unusual rebuttal,
17 in my view. Ms. Kessler is purporting to rebut either
18 statements made in this statement of NAB or some impli-
19 cation made in this statement from the documents cited
20 or something, and I'm just trying to find out what it is
21 that she disagrees with, what is her point in bringing
22 this testimony to the Tribunal's attention now.

23 CHAIRMAN ARGETSINGER: Objection overruled.

24 BY MR. STEWART:

25 Q Do you disagree with that final statement, Ms.

1 Kessler -- I'm paraphrasing -- that it was absolutely
2 clear that MPAA, NAB, WTBS and all the others considered
3 Night Tracks a Syndicated program when the Tribunal made
4 its Phase I allocation?

5 A As John Dean would say, at that point in time.

6 Q At that point in time, which was in February
7 of 1986?

8 A If you say that's when it happened, I don't
9 disagree.

10 Q Then the sentence -- back to the sentence that
11 cites the stipulation and the order, it reads, "Indeed,
12 the final witness to appear in the 1981 Phase I rebuttal
13 hearings, Mr. Ross of WTBS was to have listed all of
14 the programs owned by WTBS that MPAA had classified as
15 Syndicated but which should have been classified as
16 Local", and then it says "see stipulations filed November
17 18, 1985 and Tribunal order dated February 11, 1986".

18 Now, do you disagree with that statement, is
19 that the point of your testimony?

20 A Yes, I do.

21 Q Explain to me exactly why.

22 A I disagree with two parts of the statement.
23 I, first of all, disagree with the intention of Mr. Ross
24 to list all of the programs owned by WTBS that MPAA had
25 classified as Syndicated and which should have been

1 classified as Local, number one, because there is no
2 indication that he intended to list all such programs, and
3 there is no indication that he intended to testify on
4 MPAA's categorization.

5 Q Are those your two areas of disagreement?

6 A Yes, they are.

7 Q Now, you know nothing at all about Mr. Ross'
8 intention as to the purpose of his testimony, do you?

9 A I don't agree with you. As I indicated with
10 the direct testimony, I think there are three very con-
11 crete examples in these documents where the scope of
12 Mr. Ross' understanding and the items upon which he was
13 going to testify are defined, and I'll be happy to repeat
14 them again. One is the qualifying language. In the
15 stipulation, he indicates that the "following programs,
16 among other", and I, Marsha, underlined "among others".
17 We certainly knew they were among others, that this was
18 not a complete list.

19 The same language is also used in the November
20 1 affidavit, our Exhibit R18, and I think even more
21 strongly is his statement in paragraph 17 of the stipula-
22 tion, that he had no explicit knowledge of the definition
23 of Local programming or Minor Sports programming as used
24 in the Nielsen Special Study categorization.

25 I don't think he intended to list all of the

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1 programs that MPAA had classified as Local -- as Syndi-
2 cated which should have been classified as Local, at all.

3 Q Now, first, the sentence from the statement
4 of NAB doesn't say he was going to testify about the
5 classification, it was that he was going to list all of
6 the programs that MPAA had classified as Syndicated but
7 which should have been classified as Local. Is there a
8 difference, in your view, there?

9 A He has addressed MPAA's classification of
10 programs, and I would hope that if he was going to talk
11 about our classification of programs, he would have some
12 notion of the art of classification.

13 Q Back to my original question, you know nothing
14 at all about the intention of Mr. Ross and his testimony
15 except what you try to infer from reading this language,
16 is that right?

17 A This stipulation is cited in your Phase II
18 statement, and because you have relied upon it, I have
19 relied upon it.

20 Q Okay. Once, again, you know nothing about his
21 intention, his personal intention -- you haven't talked
22 with Mr. Ross about his intentions, is that correct?

23 A I have not talked to Mr. Ross about his inten-
24 tions, but I see nothing in the stipulation to indicate
25 that it is anything other than what I have said.

1 Q Okay, right. You are only reading the documents
2 and telling us your interpretation of these documents?

3 A That's true.

4 Q And that is based on your confidence and your
5 ability to read documents correctly, is that right?

6 A That's right.

7 Q And that is as good as anybody in the room?

8 A You bet.

9 Q Now, do you agree that it is important when
10 you are reading a document to understand the context of
11 the document?

12 A That's exactly why I am here.

13 Q All right. Do you know what the context of
14 these documents was?

15 A I do.

16 Q You haven't read the entire NAB rebuttal case
17 in the 1983 Phase I proceeding?

18 A I know that the time that all of this paper
19 was produced, the issue before the Tribunal was minor
20 sports and more specifically wrestling programs on WTBS.
21 It was this issue with which the Tribunal and the parties
22 were grappling, and no other.

23 Q I am afraid that is not my reading of the docu-
24 ments. And if you will look at the documents you have
25 submitted, you will see, for example, in Paragraph 11

1 of the stipulation, that there were other programs that
2 were not minor sports and not wrestling, but were included
3 in the stipulation, isn't that right?

4 A I have made reference to those programs.

5 Q So what you just said is not correct, is it?
6 It had to do with wrestling and other programs classified
7 by MPAA as syndicated programs that should have been
8 classified as local programs, that is the subject of the
9 stipulation?

10 A There is no indication in Paragraph 11 as to
11 which way MPAA had categorized these programs.

12 Q Right. And that's why I wanted to talk about
13 the context. Are you aware that in the 1983 Phase I
14 proceedings, MPAA was arguing for Phase I allocation for
15 syndicated series and movies, based on a viewing study?

16 A Yes, I am.

17 Q Okay, and that was the Nielsen Viewing Study,
18 is that right?

19 A That's right.

20 Q And the MPAA share, or the syndicated series
21 share was based on the viewing to the programs in the
22 Nielsen study that were classified as syndicated series,
23 isn't that right?

24 A Would you ask me that question again, please?

25 Q In the Nielsen Viewing Study programs were

1 classified as syndicated series, the amount of viewing to
2 those programs was what was the basis for MPAA's Phase I
3 claim, isn't that right?

4 A That's right.

5 Q Night Tracks was classified as a syndicated
6 series in that study, isn't that correct?

7 A It was primarily classified as a series.

8 Q It was never classified -- it was never de-
9 classified as a series by anyone in the 1983 Phase I
10 proceeding, isn't that correct?

11 A Not in the Phase I proceeding.

12 Q Phase I is all we are talking about here.

13 A Okay.

14 Q And you know that the NAB witness specifically
15 brought to the Tribunal's attention that Night Tracks
16 was a syndicated series, don't you, during the course of
17 the Phase I 1983 proceeding?

18 A Would you ask that again?

19 Q The NAB witness brought to the attention of the
20 Tribunal that Night Tracks was classified in the Nielsen
21 Viewing Study as a syndicated series?

22 A In the '83 proceeding?

23 Q The '83, Phase I proceeding?

24 A I don't know that.

25 Q All right. Well, did you read the rest of the

1 paragraph in this statement that you are rebutting? the
2 reference to the 1983 transcript?

3 A Do you have it with you?

4 Q Yes, I have the transcript, but did you --

5 A I read the entire statement.

6 Q I am not going to introduce this as an exhibit,
7 but I will provide copies for your information.

8 MR. STEWART: This is during the redirect exam-
9 ination of Dr. Abel and he talks about --

10 CHAIRMAN ARGETSINGER: Excuse me, could we just
11 have a page reference?

12 MR. STEWART: I'm sorry, transcript page 3351
13 and 3352, in the '83 proceeding.

14 BY MR. STEWART:

15 Q And Dr. Abel testifies at 3352 in answer to the
16 question, Question: "Would you look at the Night Tracks
17 program and tell me how it is classified?"

18 Answer: "Night Tracks is classified by both
19 Nielsen and MPAA as a syndicated series."

20 Do you see that?

21 A Yes, I do.

22 Q And that was the point at which CRT Exhibit
23 No. 2 was introduced, do you recall that?

24 A Whose exhibit was that?

25 Q That was this exhibit which I will give you a

1 copy of, that's just a copy of the Phase I report for the
2 1983 Nielsen Study, and it shows the Night Tracks program
3 as a syndicated series.

4 A (Perusing document) That's right, I see that.

5 Q So in the 1983 Phase I direct case, the Tribunal's
6 attention was specifically pointed to the fact that in the
7 viewing study Night Tracks was a syndicated series?

8 A Based on this transcript, I would say yes.

9 Q Okay. Now, MPAA is claiming a share of the
10 Phase I royalties, and is basing its claim on the viewing
11 study that has Night Tracks as a syndicated series. And
12 the Tribunal and everybody else knows that fact, okay?

13 A That's right.

14 Q Now, for more of the context, NAB says in its
15 Phase I rebuttal case some of those programs should have
16 been classified as local on WTBS, and it brings those
17 matters to the Tribunal's attention with a supporting
18 affidavit from Mr. Ross. Is that your understanding of
19 the rebuttal case?

20 A Yes.

21 Q How much of the rebuttal case have you read,
22 by the way?

23 A Bits and pieces of it.

24 Q Did you read Dr. Abel's testimony?

25 A No -- wait, wait, I may have read Dr. Abel's

1 testimony.

2 Q Okay, but did you read -- did you review the
3 exhibits in which NAB reclassified the programs -- the
4 WTBS programs that were classified as syndicated, or minor
5 sports and put them into the local category?

6 A I think I know the exhibits exist, I am not
7 sure that I have ever looked at them.

8 Q Well, what NAB was trying to do was to modify
9 the viewing study to put as many local programs -- put
10 the viewing to as many programs as were truly local into
11 the local viewing category, is that a fair assessment of
12 what was going on in the rebuttal case?

13 A I would say yes.

14 Q Okay. Now, is your rebuttal testimony here
15 designed to indicate that NAB knew at that point that
16 Night Tracks was a local program, and didn't tell the
17 Tribunal?

18 A I don't think I have made any inference in that
19 direction at all. I would also like to go back to some-
20 thing that you have brought up, and I think we talked
21 about this in direct, as well. And that is that everybody
22 knew that Night Tracks was a syndicated program.

23 As you know, I believe there is easily over
24 7,000 programs that appear in the Nielsen Study, just in
25 the series category and in the movie category alone. To

1 be quite honest with you, I don't know the total number of
2 programs that appear in the entire study. There are
3 many programs upon which I base my case, and you base
4 your case, that I may not know the specific title of.

5 So to say that my case was based on Night Tracks
6 is misleading. Night Tracks was certainly one of thousands
7 of programs upon which the Phase I case was based.

8 Q Well, I want to talk about the context of the
9 documents that you have submitted as rebuttal exhibits.
10 They were all submitted by NAB in support of its rebuttal
11 case, which was designed to take as many programs as
12 possible on the WTBS and the WTBS Nielsen viewing number,
13 and put them in the local programming category, if that
14 could be supported. Isn't that the context of the docu-
15 ments?

16 A If you say it is, I have no reason to disagree
17 with that.

18 Q Because you don't know what the context was --

19 A I told you I know the exhibits exist, but I
20 have not analyzed them.

21 Q Well, then assume with me that that was the
22 context --

23 A And I said I would.

24 Q Wouldn't it be crazy for NAB to have left out
25 Night Tracks -- left Night Tracks out of those exhibits,

1 if it had been aware at the time that it could have claimed
2 that as a local program?

3 A I think probably both NAB and MPAA, and perhaps
4 Turner Broadcasting were all -- in fact, I know we were
5 all unaware of the true nature of Night Tracks. And the
6 assumption was that Night Tracks was a syndicated program,
7 which we now do not support.

8 Q All right.

9 A So we were all working under the same assumption.

10 Q All right. And that is why when Mr. Ross appeared
11 as a witness on behalf of NAB, in Phase I rebuttal hearings
12 in 1983, his not listing Night Tracks indicated that all
13 parties assumed at that time that Night Tracks was a
14 syndicated series, that's what you have just said --

15 A He appeared as a witness?

16 Q Yes, he appeared to present testimony, and his
17 testimony was substituted by this stipulation. You were
18 not aware of that?

19 A I thought he did not appear physically at all,
20 and that this was the source of his presentation.

21 Q Okay.

22 MR. LANE: That's not a very accurate statement.
23 Are you suggesting that Mr. Ross never physically took the
24 stand?

25 MR. STEWART: Mr. Ross was physically in the

1 hearing room on the morning that he was scheduled to give
2 testimony, but the Tribunal suggested that we take a
3 recess and work out a stipulation. He physically appeared
4 in the hearing room.

5 MR. LANE: But he was not ever physically under
6 oath, nor did he ever physically give oral testimony.

7 MR. STEWART: Yes, that's true, he was physically
8 here, but he was not physically a witness.

9 COMMISSIONER AGUERO: He was physically here,
10 but he never testified before us.

11 MR. LANE: My point is that the stipulation is
12 the only record evidence, in addition to the affidavit,
13 that Mr. Ross has ever put in any record that I am aware
14 of in the distribution proceedings.

15 BY MR. STEWART:

16 Q And if NAB's rebuttal case was -- when you
17 include the testimony of other witnesses, who were to
18 appear and who did appear on behalf of NAB, when they
19 said "Here is the testimony -- which is reduced to the
20 stipulation -- Here is the testimony that Mr. Ross was
21 going to present, and we are going to argue that based
22 on the facts that he has presented, those programs listed
23 in Paragraph 11 of the stipulation should have been
24 classified as local, not syndicated. Therefore, the
25 viewing to those programs should have been credited to

1 the NAB's share, then your comments with respect to his
2 intention to testify about categorization become sort of
3 moot, don't they, given that context?

4 A I disagree.

5 MR. LANE: I object to the question. The
6 question talks about intention of NAB witnesses on
7 different testimony, and then attempts to relate that to
8 what Mr. Ross's intentions were.

9 MR. STEWART: Mr. Chairman, this witness has no
10 knowledge whatsoever about -- and no expertise about Mr.
11 Ross's intention, and I will withdraw the question.

12 MR. LANE: That's an inaccurate statement. When
13 you asked the witness that question, Mr. Stewart, she
14 answered that that was not true, and she specified how
15 she knows of what Mr. Ross's stated intentions were.

16 MR. STEWART: Let's look at that.

17 BY MR. STEWART:

18 Q Would you turn to Paragraph 11 in Exhibit R-16,
19 the stipulation?

20 A (Perusing documents) I have it.

21 Q And you circled the language "among others",
22 do you see that?

23 A Yes.

24 Q Again, I want to get your agreement with me
25 that it is important to understand the context, before you

1 can understand the language, do you agree with that?

2 A I do agree with that.

3 Q Now, are you aware that there were other pro-
4 grams on WTBS that were local programs?

5 A Yes, I am.

6 Q That were already classified as local programs
7 in the Nielsen Study?

8 A Yes.

9 Q Given that context, doesn't the language "among
10 others" then logically refer not to Night Tracks, but to
11 the local programs broadcast on WTBS, and properly
12 classified as local by Nielsen?

13 A It certainly could encompass those, but it is
14 not limited to those.

15 Q Well, back again to the context we talked about
16 before, NAB's purpose in its rebuttal proceeding was to
17 find as many programs on WTBS as possible that were
18 classified as syndicated series, that should have been
19 classified as local, is that correct?

20 A That's right.

21 Q Given that context, could this "among others"
22 language possibly refer to Night Tracks?

23 A I think it certainly could.

24 Q You have already agreed with me, however, that
25 at this time Mr. Ross, NAB and MPAA, and the Tribunal

1 were all under the assumption that Night Tracks was not
2 such a program?

3 A I think one of the purposes that people have
4 when they use qualifying language is to qualify such a
5 statement.

6 Q Are you familiar with Mr. Ross's language?

7 A No.

8 Q I would like to move next to your Exhibit 22.

9 A (Perusing documents)

10 Q Before we move to that, we talked about this
11 a bit during the direct, but it is relevant here, again,
12 given the context of the documents that you submitted
13 with respect to the Night Tracks program. Do you know
14 whether it is the case that the Night Tracks program and
15 the other programs listed in Mr. Ross's January 1986
16 letter to you would have increased the NAB Phase I viewing
17 share in 1983, by roughly one-half percent?

18 A I don't know that.

19 Q You don't know that. This exhibit, R-22, what
20 is the point of it, Ms. Kessler?

21 A I was requested by counsel to make a search of
22 the programs for which NAB was claiming, and that is the
23 source of this exhibit.

24 Q Did you make a search with respect to each of
25 the programs listed in your exhibit, I guess it is

1 Exhibit 3, that is the syndicated programs claimed by
2 MPAA-represented claimants to see whether they had filed
3 registration?

4 A This is the only search request I have done.

5 Q Now, why did you consider it necessary to make
6 a search request for the NAB programs, when you didn't
7 do so for the MPAA programs?

8 A I did this search at the request of counsel.

9 Q So you don't know what the purpose of this was?

10 A No, I don't.

11 Q Are you aware that the absence of a registration
12 has no effect whatsoever on the validity of the copyright
13 held by the producer of a program, given the circumstances
14 of the NAB-represented programs?

15 A I believe that is a legal opinion, and I am not
16 qualified to address that.

17 Q Do you have any idea whether the absence of a
18 registration has any effect whatsoever on the validity
19 of the copyright owned by the producer of the program?

20 A I have the same answer I just gave you.

21 Q Were you aware, Ms. Kessler, that three of the
22 programs included in your list of programs for which
23 MPAA also makes a claim, that is Miller's Court, the
24 Dance Show and Fight Back With David Horowitz?

25 A Yes, I am.

1 Q And what conclusion do you draw from the fact
2 that none of those programs claimed by MPAA had a
3 registration on file?

4 A I have the same answer I gave before.

5 Q You don't know what the purpose of this is?

6 A I did it at the request of counsel.

7 Q Do you know what it is about the direct case
8 of NAB that you are rebutting?

9 A I prepared this at request of counsel.

10 MR. STEWART: Counsel, can I have a statement
11 as to what, if anything, in the NAB direct case this
12 rebuts?

13 MR. LANE: I think it is self-evident, this
14 addresses Exhibit II-2.

15 MR. STEWART: It does?

16 Mr. Chairman, I guess I would move at this time
17 to strike this exhibit as being completely irrelevant, as
18 not rebutting anything. I expected to find out from Ms.
19 Kessler that she had some point to make with this.

20 I call to the Tribunal's mind its ruling with
21 respect to the request made by Multimedia in the 1983
22 proceeding, that parties be required to provide this kind
23 of evidence about the existence of registrations, and
24 the Tribunal rejected that requirement.

25 This is absolutely irrelevant to the copyright

1 validity of any of the programs in the claim, and I don't
2 see any reason to keep it in the record. If it doesn't
3 rebut anything, then let's take it out of the record.

4 MR. LANE: I think the purpose of this exhibit
5 will be explained in the findings, which --

6 COMMISSIONER RAY: I would like for the witness
7 to tell me -- the witness sponsoring this. I would like
8 for the witness to tell me what she thinks the purpose of
9 this exhibit is.

10 THE WITNESS: I don't mean to be impertinent,
11 but my response is the same. Mr. Lane asked me to do
12 the search, I conducted the search and this is the meat
13 of it.

14 MR. STEWART: In my view, Mr. Chairman, this is
15 improper rebuttal. It doesn't rebut anything in the
16 NAB direct case. And I move to strike the exhibit and
17 the testimony that relates to the exhibit.

18 CHAIRMAN ARGETSINGER: The objection is sustained.
19 The exhibit will be stricken.

20 MR. LANE: Mr. Chairman, could I ask a clarification,
21 is that ruling the same effect to all exhibits
22 which were presented at the request of counsel, and
23 whose purpose will be explained in the findings, and not
24 by the witness? And I make specific reference to any
25 number of statements contained in the NAB direct case,

1 which I would be happy by written proposal to identify
2 more clearly.

3 CHAIRMAN ARGETSINGER: Well, you have an oppor-
4 tunity, of course, to cross the witness at that time. And
5 if the witness can't give any basis for the document --

6 MR. LANE: I believe, and I am prepared to put
7 it in a written statement, that the witness, upon cross-
8 examination, gave precisely the same answers, and there-
9 fore, I either ask that you keep the record open, -- make
10 a motion based on the same basis of this ruling.

11 COMMISSIONER RAY: But I believe the motion also
12 had something to do with relevance, didn't it?

13 MR. STEWART: Yes, and I am sure that Mr. Lane
14 is referring to our direct case, and Exhibit II-2, where
15 we put in factual evidence to support our direct case.

16 This exhibit presents certain facts that have
17 no relevance whatsoever to our direct case. In rebuttal
18 the evidence is supposed to rebut something in the direct
19 case. I don't understand what this rebuts, nothing has
20 been stated by the witness, or counsel with respect to
21 that, and it is not proper rebuttal.

22 MR. LANE: I think this is the presentation of
23 factual evidence that can be used in the findings, it
24 requires legal interpretation. And we are prepared to
25 present that type of legal interpretation as part of our

1 findings.

2 We put in the evidence, the facts with a witness
3 who testified. As you recall, in addition, Mr. Thrall
4 last year testified to precisely the same thing, that he
5 told a paralegal. We were not even allowed to cross-
6 examine the paralegal. Go down to the Copyright Office
7 and look for certain things at the Copyright Office, and
8 that evidence was allowed in and arguments made.

9 I am attempting, I would submit, that we would
10 present the same type of legal arguments in our findings.

11 CHAIRMAN ARGETSINGER: And at that point you
12 are suggesting that you are going to show the relevancy.

13 Well, can we ask you now if it is found that
14 none of these items are registered, that they are not
15 entitled to royalties? Is that your position?

16 MR. LANE: I am prepared to state what my
17 position is during findings, Mr. Chairman, I am not pre-
18 pared to state it at this time.

19 I don't believe that the purpose of the
20 evidentiary hearings is for the lawyers to make their
21 arguments that they are going to make on findings, it's to
22 present the facts that will support those arguments. And
23 that is what we have done.

24 COMMISSIONER RAY: But do you believe that when
25 a witness is going to testify to a document, that that

1 witness should be able to give us some information, even
2 as far as what is the relevancy of the testimony, of the
3 exhibit?

4 MR. LANE: Mr. Chairman, and Commissioners, I
5 don't know that the witness can always testify what the
6 relevancy is, or that all of us around the table would
7 agree what is relevant, or not relevant about certain
8 testimony.

9 The witnesses are here to present facts and
10 information, and that's what this witness did.

11 COMMISSIONER RAY: And we will weigh that.

12 MR. LANE: You will weigh that, and you will
13 determine the relevancy ultimately.

14 CHAIRMAN ARGETSINGER: We are asking you now
15 what the relevancy is.

16 MR. STEWART: Mr. Chairman, I guess my specific
17 problem with it is this is rebuttal, this is the rebuttal
18 phase, and the purpose of evidence in the rebuttal phase
19 is to rebut portions of the direct case.

20 CHAIRMAN ARGETSINGER: And how is it relevant
21 to --

22 MR. STEWART: Not only that, Mr. Lutzker is going
23 to present some registration stuff in his rebuttal case,
24 but the --

25 COMMISSIONER RAY: And the relevance --

1 MR. STEWART: -- and the relevance of that is
2 absolutely clear, because he is talking about programs
3 included within the MPAA claim that have gone into the
4 public domain. None of the programs in Exhibit R-22 are
5 in such a position.

6 It is not simply that I fail to see the
7 relevance, I see that it is affirmatively irrelevant to
8 the direct case, unless there is some explanation that
9 can be provided by counsel, or the witness. It is not
10 to me subject to being stricken because the witness is
11 here to present the facts and can't herself describe
12 the relevance.

13 It is that this is the rebuttal phase. This
14 has to be rebutting something, or it should be thrown out.
15 Is it merely an extension of their direct case, or what?

16 MR. LANE: Mr. Chairman, I would point out that
17 the Tribunal struck during our direct case all our refer-
18 ences to NAB, to any programs that were proffered by NAB.
19 And, in fact, we didn't know what all the NAB programs
20 were until the direct was exchanged.

21 And I submit to you that if we can't present
22 this in rebuttal, that we can't submit it in direct, and
23 we are completely boxed out.

24 I would also submit to you on the question of
25 relevance, we think, and we think you have agreed with us,

1 for four or five years, that the type of evidence that
2 Mr. Lutzker is once again going to present is totally ir-
3 relevant to this proceeding, and totally irrelevant to
4 our claim. And he is raising, in my view, just to bring
5 out one example, the famous 39-Steps again, which I can't
6 believe that he is raising that after the evidence pro-
7 duced last year, and the ruling that you made on that.

8 So, I would consider that totally irrelevant.
9 So I think the question of relevancy is not one that I
10 can agree with Mr. Stewart, and I assume Mr. Lutzker, who
11 both think that is relevant. I think that stuff is totally
12 irrelevant, and you have ruled, and the courts have up-
13 held you, time and time again.

14 MR. LUTZKER: Mr. Chairman, I feel drawn into
15 this.

16 MR. LANE: This maybe a first --

17 CHAIRMAN ARGETSINGER: Do you want to wait
18 until tomorrow?

19 MR. LUTZKER: Well, that's clear, I think Mr.
20 Stewart quite ably presented the position. I don't know
21 whether it is necessary to comment, other than to say --

22 COMMISSIONER RAY: Mr. Lane, were you making a
23 motion for reconsideration? We've already made a decision.

24 MR. LANE: I will make such a motion orally,
25 Commissioner Ray.

1 COMMISSIONER RAY: I just want to know what --

2 MR. LANE: I will make that motion, I was
3 specifically asking when this originally started, and
4 you know, these things have a way of coming around --
5 whether this ruling would have precedential value for
6 all parts of Phase II, specifically for testimony that
7 has been presented earlier in Phase II, where the witness
8 expressly on cross-examination did not indicate that the
9 witness was aware of relevance.

10 That was my original one, but since we have
11 sort of come around again, I will also move for reconsider-
12 ation of the earlier ruling.

13 (Discussion off the record)

14 CHAIRMAN ARGETSINGER: Mr. Stewart, do you have
15 any further remarks on this?

16 MR. STEWART: Simply that the basis for my
17 objection is that this is not proper rebuttal, unless
18 it rebuts something, and it does not rebut anything.

19 CHAIRMAN ARGETSINGER: Very good, we will reserve
20 judgment on that.

21 Proceed.

22 MR. STEWART: I have no further questions on
23 cross-examination.

24 CHAIRMAN ARGETSINGER: Mr. Lutzker, how long
25 do you have?

1 MR. LUTZKER: I don't have too many questions.

2 MR. GARRETT: I have three short questions to
3 follow up on a point that was made by Mr. Stewart.

4 CHAIRMAN ARGETSINGER: Mr. Lutzker, do you mind?

5 MR. LUTZKER: That's fine.

6 CHAIRMAN ARGETSINGER: All right, Mr. Garrett.

7 CROSS-EXAMINATION

8 BY MR. GARRETT:

9 Q Marsha, in response to a question from Mr.
10 Stewart, you indicated that Night Tracks was one of
11 several thousand programs that was included in the MPAA
12 1983 claim, do you recall that?

13 A Yes, I do.

14 Q And when you made that statement, Marsha, were
15 you aware that the Night Tracks programs by itself
16 accounted for approximately half a point of viewing in
17 1983?

18 A I did not have specific percentage in mind.

19 Q Several thousand programs that were included in
20 the MPAA 1983 claim, approximately how many of those
21 would account for as much as a half a point of viewing?

22 A I have no idea.

23 Q It would probably be a very small number,
24 wouldn't it, Marsha?

25 A I don't know.

1 MR. GARRETT: I have no further questions.

2 CHAIRMAN ARGETSINGER: Mr. Lutzker.

3 CROSS-EXAMINATION

4 BY MR. LUTZKER:

5 Q Marsha, would you turn to Exhibit R-15?

6 A (Perusing documents)

7 Q Whose idea was this exhibit?

8 A It was mine, and I was really proud of it.

9 Q This is a variation -- looking at the second,
10 third and fourth pages, this is a variation of a document
11 that was used in cross-examination of Mr. Thrall?

12 A I was not present for his cross-examination.

13 Q Did you have any involvement in the preparation
14 of the cross-examination exhibit?

15 A No, I did not.

16 Q And you didn't see any cross-examination exhibits
17 of Mr. Thrall?

18 A No, I did not.

19 Q Did you create this solely by yourself?

20 A I did. I would just like to add, for the benefit
21 of my boss, I always call him Mr. Numbers, and I have
22 always felt like I could never do it quite as well as he
23 does with numbers, and so when I produced this, I was
24 quite pleased with myself.

25 Q Well, good.

1 MR. LANE: Why don't you ask her another question?

2 MR. LUTZKER: Can your hand reach --

3 THE WITNESS: He won't do it, so I have to do
4 it on the record.

5 BY MR. LUTZKER:

6 Q The numbers included in this exhibit are total
7 audience, or average audience?

8 A Which portion, are you looking at the detail
9 pages? I will tell you, I copied the word "audience"
10 and I don't know what adjective applies to that.

11 Q Is there a difference?

12 A Between?

13 Q Total audience and average audience?

14 A I don't know the answer to that question.

15 Q Are these figures from the NSI?

16 A These are from your exhibits.

17 Q I understand where you got them from, are they
18 from the NSI?

19 A I don't know.

20 Q Do you know what the NSI is?

21 A Nielsen Station Index.

22 Q Are you presenting yourself as an expert in
23 these numbers?

24 A I am presenting myself as a person who knows
25 how to add, subtract, multiply and divide.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Q In your statement you indicate that reliance
2 upon aggregate audience in the specials is misleading,
3 where did you form that opinion?

4 A I formed it -- if you would look at the last page
5 of the exhibit, if you look at what I have called audience
6 figures, the total line for each year. It is obvious that
7 the audience figure increases from one year to the next.
8 And so that certainly does give the impression that the
9 specials are bringing in more and more audience as time
10 goes by.

11 I think that is misleading because it gives an
12 inflated presentation of the value of these programs. I
13 think it is better to look at the specials on an average
14 basis, so that you can compare the average programs
15 ability to perform from one period to the next.

16 Q Is that average for special audience concept
17 a standard measure used by any measuring society?

18 A It is a Marsha Kessler measure.

19 Q Is it based upon any -- did you develop that
20 based upon any particular research that you did in the
21 field, or it is just something that came to you?

22 A I don't know what you mean, what kind of
23 research could I have done?

24 A I don't know, I am asking, did you do any
25 research, in terms of making a judgment that an average

1 per special was a better way of valuing programs than an
2 aggregate?

3 A I didn't do any special research, but I would
4 just make the observation, that if you have 100 people with
5 100 television sets, and they all watch TV 24-hours a
6 day, regardless of the number of programs that are shown,
7 viewing at some point adds up to 100 percent, and people
8 watching TV adds up to 100 percent.

9 And the way in which that viewing figures, the
10 way in which the audience is allocated amongst the differ-
11 ent programs is important.

12 And I think the most realistic way of approach-
13 ing that is to do it on an average per program basis.

14 Q If you look at the 1980 figure, you have an
15 average per special of 17 --

16 A Are you on the summary page?

17 Q The summary page -- the last page. And you
18 indicate that there were four programs identified in 1980,
19 and that is obviously substantially higher in number than
20 in 1984. Is it your suggestion, however, in 1984 there
21 were 26 programs -- is it your suggestion that the fact
22 that there were 26 programs reaching a total audience of
23 163 million, deserves less valuation by this Tribunal,
24 than the four programs which reached less than one-third
25 that number?

1 A I am suggesting exactly that, because as the
2 figures bear out, when you look at them on the average
3 basis, people just were not watching.

4 Q Is that the way MPAA deals with its member
5 clients in its study?

6 A Yes, it is.

7 Q Would it surprise you then if we took a look
8 at Multimedia's -- how Multimedia came out, say, in 1982
9 and 1983, where there was a drop on your figures of some
10 50 percent or a third percent decrease in ratings --
11 excuse me, from '81 to '82 -- let me start over.

12 A I am lost, so --

13 Q I will start over. Page 3, would it surprise
14 you that in a period between 1981 and 1982, where the
15 average per special rating decreased by five rating points
16 according to your summary, that within the numbers pre-
17 sented to the Tribunal by MPAA during that period, that
18 the viewing hours of Multimedia increased almost 600
19 percent with respect to specials?

20 A I don't think you can make that kind of com-
21 parison. As I indicated in my testimony with Mr. Lane
22 when we began today, we think these kind of data are
23 virtually worthless. I don't expect to see any kind of
24 correlation between distant signal viewing and viewing of
25 a station within its market.

1 So, "surprise" is not a word I would use at
2 all. It is apples and oranges.

3 Q Are you aware that the figures you are quoting
4 here at NTI figures?

5 A No, I am not, I thought you said NSI.

6 Q No, I asked you if you knew what the figures
7 were.

8 A Oh, no, I was not aware of that.

9 Q Did you take a look at average audience figures
10 instead of total audience figures for any of the periods?

11 A I used the data from your exhibits.

12 Q Did Multimedia provide average audience figures,
13 for calendar years 1983 and 1984?

14 A I don't know the adjective to the word audience.
15 I do not know the adjective that went with the word
16 audience.

17 Q I am asking you, you reviewed the Multimedia
18 exhibits from which your exhibit was prepared, did you not?

19 A That's right.

20 Q Did Multimedia in the documents that you reviewed,
21 include total audience figures and average audience figures
22 in those exhibits?

23 A I don't know.

24 Q This is the 1984 -- is this one of the documents
25 that you looked at?

1 A (Perusing document) Yes, it is.

2 Q And did Multimedia provide average audience and
3 total audience figures?

4 A Yes, you did.

5 Q Did you make any effort to total up average
6 audience figures, as well as total audience figures?

7 A No, I did not. May I see that again, please?

8 Q Sure. (Handing)

9 A Okay.

10 Q If I tell you that the average audience rating,
11 for 1983, was about 5 percent and the average audience
12 rating for Multimedia programs -- specials in '84 was
13 4 percent, could you draw any scientific or statistical
14 analysis, based upon that fact?

15 A You are saying in '83 it was, what?

16 Q Five percent.

17 A And then it declined in '84 to 4 percent?

18 Q To 4 percent.

19 A And the question is?

20 Q What is the significance?

21 A One percent.

22 Q What else? Statistically what are you qualified
23 to say about that?

24 A That was the average rating? I think there is
25 an obvious decline, I don't know what other observation --

1 Q What does a 5 NTI rating mean to you?

2 A A rating, in general, is the calculation, the
3 number of households that are tuned to a particular station,
4 or a particular program, taken as a percentage of the total
5 number of television households within an area. That is
6 my definitional understanding of what a rating is.

7 The rating dropped.

8 Q Are you sure?

9 A Four is a lower number than five.

10 Q Four is a lower number than five. Do you know
11 if the number five is subject to any statistical variable
12 range, when Nielsen gives numbers? When they say that you
13 have a five rating, what does that mean?

14 A I think for any statistic you will find a
15 variance and a standard deviation assigned to that. I
16 do not know the variance or standard deviation of these
17 numbers.

18 Q So could it be perhaps that a 5 rating in one
19 year and a 4 rating in one year, in fact, are very com-
20 parable?

21 A I don't feel prepared to agree, or disagree
22 with that.

23 Q So you have no opinion?

24 A That's correct.

25 MR. LUTZKER: I have no further questions.

1 CHAIRMAN ARGETSINGER: Redirect.

2 MR. LANE: Could we just have a minute?

3 CHAIRMAN ARGETSINGER: Yes.

4 (Whereupon, a short recess was taken)

5 CHAIRMAN ARGETSINGER: Back on the record.

6 MR. LANE: I just have a couple questions.

7 REDIRECT EXAMINATION

8 BY MR. LANE:

9 Q Ms. Kessler, do you recollect whether Multimedia
10 provided average audience ratings in its exhibits in all
11 the years that you used?

12 A It is my recollection that those data were not
13 available, until 1984, in their exhibits.

14 Q And is it your recollection that the total
15 audience figures were available in all of the years for
16 which you included in your exhibits?

17 A That's right.

18 MR. LANE: Those are all of the questions I have
19 on redirect.

20 CHAIRMAN ARGETSINGER: Thank you.

21 Any further items?

22 (No response)

23 CHAIRMAN ARGETSINGER: We will meet tomorrow
24 at 10:00 o'clock, here, if they will still allow us. I
25 was just told we were supposed to be out of here by

1 4:30, so I think we did pretty good.

2 (Whereupon, the hearing was adjourned at 4:45
3 p.m., to reconvened at 10:00 a.m., Thursday, December 4,
4 1986)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of:

Cable Copyright Royalty Distribution--Phase II

Rebuttal

Before:

Copyright Royalty Tribunal

Date:

3 December 1986

Place:

CFTC

2033 K Street, N.W.

Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.


PHYLLIS YOUNG

NEAL R. GROSS
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1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

DISTANT VIEWING OF DONAHUE - MAY 1983

HHLDS PER ¼-HOUR

KCRA	13,320	
KTVU	11,710	
KNBC	6,780	
KOA	5,910	
WCMH	4,310	
WTTV	3,090	
KSNT	2,480	
WTNH	2,050	
WMAR	2,000	
WTRF	1,980	
WAGA	1,920	
KVOS	1,810	
WPLG	1,760	
WJAR	1,590	
WBBM	1,280	2.0%
WPVI	1,170	
WWLP	610	
WMUR	430	
WYTV	330	
WDTN	220	
	<u>64,750</u>	

SOURCE: NIELSEN SPECIAL STUDY

Stations submitting 1983 questionnaires not submitting
1984 questionnaires

- TALKED to P.D. --- only Show is Paha Sapa --- ~~ADLT & KEVN~~
- ✓ 1. KEVN - Rapid City, SD (605) 394-7777 Ray Moser
~~not a member; 4:00 call back in meeting~~ ^{ly Fletch} ~~Strip Smith - P.D.~~
- ✓ 2. KGW - Portland, OR (503) 226-5000 ~~no syndicated programming.~~ ~~James Atwood~~
- ✓ 3. KING - Seattle, WA (206) 448-5555 ~~Operations will get it sent in~~ ~~James Merrill - Se~~
call back around 4:30 --- she will check on ~~Sturges Donance~~
who is doing questionnaire - will call back 9/11/86; 9/11/86 - out to lunch
- 9-11-86
Leo
Remos
web
9-12 - call him on 11/17/86
9/18/86 - left message web
4. KMEX - Los Angeles, CA (213) 466-3434 ~~Robert Villanueva~~
2:45 call back late pm; call back; call back 9/11/86. ~~Program~~
- ✓ 5. KOTV - Tulsa, OK (918) 582-6666 Phil Kelley
Sandy Strickland
WC
Soc. will check on it; call back late pm; - will complete and send!
- ✓ 6. KSTP - St. Paul, MN (612) 646-5555 ~~nothing long will back; call back; call back 9-11-86~~ ~~in the process~~
of filling it out. ^{rob Ruggsbrown} ~~Public Duke~~
- ✓ 7. KTVO - Kirksville, MO (816) 665-7781 ~~Frank Jones~~ → P.D. ~~Dean Weating~~
~~out back after 3~~ → don't do any!
- ✓ 8. KXTX - Dallas, TX (214) 521-3900 Dick Bove
given to P.D. ~~Ken Jodie call back after 3~~ - none.
- ✓ 9. KMEG - Sioux City, IA (712) 277-3554 Bruce Lewis -
didn't ~~have any~~ syndicated programming in 1984

Sandy Wilson

check on valid claims.

1984 Claims

WKAQ	718
WSB	584
KEVN	6
WMAQ	720
WNBC	720
KNBC	720
WCCO	476
WTMJ	368
KOLN	464
KTVA	no claim
WWAT	no claim
KING	681

no claim - Northern
no claim - Western Enterprises, Inc.

① WSPA - Jimmy Sanders
(803) 576-7777
will let me know if
"Dreams..." was shown
on WSPA in 1984

yes
9/12 - web

~~② [REDACTED]~~

~~② WPHL --- where is questionnaire~~

③ KTTV -- Marian GIPTI
Program Coordinator
(213) 462-7111 Ext. 1203

9-15 Pat Becker
will check & call
me back - (213) 856-1203
9/12 - check on machine
9/12 - in web work of

- check call letters:
K L K K see revised
K R I T List

(call back -- not in yet)

④ KHJ -- Monique Reid on other
(212) 642-4245 - line her back

(yes) ① Was "Your Choice for the Film Awards
1984" Shown on KHJ?

~~scribble~~

② WJZ (J) WJZ - Mobile Alabama are these call
letters correct?
③ WYMA - Fred said she can't tell what it is --

1982-83 Factbook -- lists WYMA in Grand Rapids,
changed call letters to WYMI
with check on other call letters Michigan

7/31/86

W JXT is writing on disputation
information. Will Fed. Ex.
questionnaire ASAP.

Christy Biron - (904) 393-9802

VIEWING TO SOME PROGRAMS LISTED IN EXHIBIT II-2
AND OMITTED FROM MPAA EXHIBIT R-11, AND ESTIMATE
OF MINIMUM VIEWING TO NAB PROGRAMS

<u>Station</u>	<u>Program</u>	<u>Viewing^{1/}</u>
WCCB	Tom Reed Show ("NC State Coaches Show")	2,564
WDIV	Lottery Special ("Michigan Lottery")	1,764
WGGB	Candlepin Bowling	57,627
WTTV	IHSAA Package ("IHSAA Basketball"; "IHSAA Girls Championship"; "IHSAA Girls Final"; "IHSAA Pairings"; "IHSAA Swim Final"; "INSAA Football"; "INSAA Volleyball")	45,011
WTTV	Quest For Gold	7,543
WTTV	Report from Statehouse	9,615
PARTIAL SUBTOTAL OF VIEWING TO OMITTED PROGRAMS		124,124
All Stations	The Dance Show	500,085
All Stations	Miller's Court	18,754 ^{2/}
KNBC, WNBC	Fight Back	49,756
PARTIAL TOTAL OF VIEWING TO OMITTED PROGRAMS		692,719

^{1/} Source (unless specifically indicated otherwise): NAB review
of MPAA 1984 data provided on December 1, 1986.

^{2/} Source: MPAA 1984 Exhibit 4.

VIEWING FROM MPAA EXHIBIT R-11 (excluding programs also claimed by MPAA)	9,554,753
<hr/>	
MINIMUM VIEWING TO PROGRAMS LISTED ON NAB 1984 EXHIBIT II-2	10,247,472
VIEWING TO NAB PROGRAMS REPORTED BY MPAA IN 1983 PHASE II PROCEEDING	9,769,999 ^{3/}
<hr/>	
MINIMUM VIEWING TO PROGRAMS LISTED ON NAB EXHIBIT II-2	10.2 million
TOTAL VIEWING TO MPAA, MULTIMEDIA AND NAB LISTED PROGRAMS	2398.2 million
<div>NAB 10.2 million</div> <div>MPAA 2381.6 million^{4/}</div> <div>Multimedia 6.4 million^{5/}</div>	
MINIMUM PERCENTAGE OF VIEWING TO PROGRAMS LISTED ON NAB EXHIBIT II-2	0.43 percent

-
- ^{3/} Source: 1984 Phase II Rebuttal Testimony of Allen Cooper, at 8.
- ^{4/} Source: MPAA 1984 Exhibit R-2.
- ^{5/} Source: 1984 Phase II Rebuttal Testimony of Allen Cooper, at 4.

PROGRAMMING BY STATION

TABLE DATA CONTAINS STATION'S TV WEEK DISTRIBUTION

CALL SIGN		CITY		ST	MARKET: 117, CHARLOTTE							TOT	HH VIEWING
WCCB		CITY NAME NOT FOUND										QHS	TOT HRS
-----NIELSEN-----		PROGRAM TYPE			JAN	FEB	MAY	JULY	OCT	NOV			
CODE	PROGRAM NAME	BIF #	NLSN MPAA SPRT		TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS			
0009	NC ST COACH SH		1LC 1LC				1900	SUN			8	2,564	

PROGRAMMING BY STATION

MOVIE DATA CORPORATION / 1984 DISTRIBUTION

05/28/82

CALL SIGN -----CITY----- ST MARKET: 105, DETROIT
WDIV CITY NAME NOT FOUND

CODE	PROGRAM NAME	RID #	NLSN	MPAA	SPRT	JAN	FEB	MAY	JULY	OCT	NOV	TOT	HH VIEWING
						TIME	TIME	TIME	TIME	TIME	TIME	QHS	TOT. HRS.
	12 O'CLOCK LIVE		11C	11C									

MICHG N LOTTERY 1LC 1LC

1930 SAT 2
1930 THU 5

1,764

51
52

ALL COPYRIGHT DISTRIBUTION
PROGRAMMING BY STATION

MOTION PICTURE ASSOCIATION OF AMERICA
CABLE DATA CORPORATION / 1984 DISTRIBUTION

04/28/88

CALL SIGN -----CITY----- ST MARKET: 143, SPRINGFIELD-HOLYOKE
WGGB CITY NAME NOT FOUND

-----NIELSEN-----		PROGRAM TYPE	---JAN---		---FEB---		---MAY---		---JULY---		---OCT---		---NOV---		TOT	HH VIEWING	
CODE	PROGRAM NAME	BIP #	NLSN	MPAA	SPRT	TIME	DAYS	TIME	DAYS	TIME	DAYS	TIME	DAYS	TIME	DAYS	QHS	TOT HRS
6177	CANDLPIN BWLNG		1LC	1LC			1130	SAT	1200	SAT	1200	SAT		1230	SAT	50	57,627

CALL SIGN -----CITY-----
WTTV 04 BLOOMINGTO

ST
IN

MARKET: 127, INDIANAPOLIS

TOT HH VIEWING
QHS TOT HRS

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-----NIELSEN-----
CODE PROGRAM NAME      BTR #  NLSN MPAA SPRT  ---JAN---  ---FEB---  ---MAY---  ---JULY---  ---OCT---  ---NOV---
                                TIME DAYS   TIME DAYS   TIME DAYS   TIME DAYS   TIME DAYS   TIME DAYS

```

IHSAA	BKBL	1LC	1LC
IHSAA	GRLS CH4	1LC	1LC

2000 WED
1930 SAT

18
10
$$\begin{array}{r} 4,20\overset{u}{7} \\ 6,842 \end{array}$$

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5
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5
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PROGRAMMING BY STATION

CABLE DATA CORPORATION 2 '1984' DISTRIBUTION

65725762

CALL SIGN WTTV 04 CITY BLOOMINGTO ST IN MARKET: 127, INDIANAPOLIS

-----NIELSEN-----			-----PROGRAM TYPE-----			---JAN---	---FEB---	---MAY---	---JULY---	---OCT---	---NOV---	TOT	HH VIEWING
CODE	PROGRAM NAME	BIG #	NLSN	MPAA	SPRT	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	QHS	TOT. HRS
	IHSAA GRLS FNL		1LC	1LC			1030 SAT					16	21,600
	IHSAA PAIRINGS		1LC	1LC			1230 SUN					4	1,410
	IHSAA SWIM FNL		1LC	1LC			2000 SUN					4	4,132
	IHSAA FTBL		1LC	1LC							1600 SAT	10	4,780
	IHSAA VOLLEYBL		1LC	1LC							2000 SAT	4	2,040

CALL SIGN WTTV 04 CITY BLOOMINGTON

ST IN MARKET: 127, INDIANAPOLIS

-----NIELSEN-----		-PROGRAM TYPE-		---JAN---	---FEB---	---MAY---	---JULY---	---OCT---	---NOV---	TOT QHS	HH VIEWING TOT HRS
ODE	PROGRAM NAME	BIF #	NLSN MPAA SPRT	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS	TIME DAYS		

QUEST FOR GOLD	13491	2SS	2SS								
QUEST-GOLD SP	13491	2SS	2SS								

1200	SUN	1200	SUN
		1900	FRI

16	4,814
2	2,729

RPT-STATEHOUSE	1LC	1LC
RPT-STATEHSE D	1LC	1LC
RPT-STATEHSE LT	1LC	1LC

0600		1530	WED
2130	SUN	2100	SUN
2200	SUN		

2230	SUN	2
2500	SUN	2

9,615	0
0	0

MPAA Viewing Hours and Station Data
 for America Comes Alive, New Faces
 and Wembley Festival (1984)

NAME: AMERICA COMES ALIVE NIELSEN: 9221 HIR CODE: 15301
 DISTRIBUTOR: 4830 MULTIMEDIA ENTERTAINMENT # OF HHRS
 CALL STATION CITY ST PROGRAM
 KMOL 04 SAN ANTONIO TX AMER COMES ALV 12,664
 KPTV 12 PORTLAND OR AMER COMES ALV 12,664
 **** PROGRAM-TOTALS

NAME: NEW FACES IN COUNTRY MUSIC NIELSEN: 0000 HIR CODE: 15303
 DISTRIBUTOR: 3674 JIM OWENS ENTERTAINMENT # OF HHRS
 CALL STATION CITY ST PROGRAM
 KMSP 09 MINNEAPOLIS MN NEW FACES CTY MC
 WAGA 05 ATLANTA GA NEW FACES-C MSC
 WNHC 04 NEW YORK NY NEW FACES-C MSC 4,100
 WPHL 17 PHILADELPHIA PA NEW FACES-MUSIC
 WSBK 38 BOSTON MA NEW-CNTRY MUSC 4,100
 **** PROGRAM-TOTALS

NAME: WEMBLEY FESTIVAL NIELSEN: 0000 HIR CODE: 05308
 DISTRIBUTOR: 4830 MULTIMEDIA # OF HHRS
 CALL STATION CITY ST PROGRAM
 KMSP 09 MINNEAPOLIS MN WEMBLEY-FESTIVL
 KSDK 05 ST LOUIS MO WEMBLEY-FESTIVL
 WAGA 05 ATLANTA GA WEMBLEY-FESTIVL
 WDIV 04 DETROIT MI WEMBLEY-FESTIVL
 WDTN 02 DAYTON OH WEMBLEY MUSIC
 WNHC 04 NEW YORK NY WEMBLEY FESTIVL
 WSBK 38 BOSTON MA WEMBLEY-FESTIVL 3,699
 WTOV 09 STEUBENVILLE OH WEMBLEY-FESTIVL 1,095
 WWLP 22 SPRINGFIELD MA WEMBLEY MUSIC FST
 WYTV 33 YOUNGSTOWN OH WEMBLEY-FESTIVL
 **** PROGRAM-TOTALS 4,794

Nine Multimedia Specials
Not Measured in MPAA Study (1984)

Out of 26 Multimedia Specials broadcast in 1984, the following nine shows were not measured by the MPAA Study:

Behind the Scenes (Original and Repeat)
Statler Brothers
Chet Atkins
Gift of Song (Original and Repeat)
Story, Song & Stars (Original and Repeat)
Stubby Pringles Christmas

Multimedia Entertainment, Inc.
Rebuttal Cross Examination Exhibit 10-X

Broadcast of Behind the Scenes
By MPAA Sample Stations in Sweep Weeks 1984

<u>Station</u>	<u>Date and Time</u>
WNBC	May 20, 1984 - 2 p.m.
WAGA	Oct 21, 1984 - 2:30 p.m.
KMSP	May 13, 1984 - 8 p.m.
KSDK	May 11, 1984 - 9 p.m.
WTTV	May 5, 1984 - 9 p.m.
WTNH	May 13, 1984 - 11:35 p.m.
KMOL	May 30, 1984 - 7 p.m.
WBRE	Jul 15, 1984 - 4:30 p.m.
WDTN	May 19, 1984 - 1 p.m.
WWLP	Sep 29, 1984 - 2 p.m.

Multimedia Entertainment, Inc.
Rebuttal Cross Examination Exhibit ~~11-X~~

Broadcast of Chet Atkins on
MPAA Sample Stations in Sweep Weeks 1984

<u>Station</u>	<u>Date and Time</u>
KNBC	Jul 29, 1984 - 12:30 p.m.
WUAB	Jul 28, 1984 - 9 p.m.
WAGA	Jul 15, 1984 - 10:30 p.m.
KMSP	Jul 22, 1984 - 11 p.m.
KSDK	Jul 14, 1984 - 8 p.m.
WMAR	Jul 29, 1984 - 2 p.m.
KPTV	Aug 4, 1984 - 8 p.m.
WTTV	Jul 14, 1984 - 7 p.m.
WJAR	Jul 29, 1984 - 12:30 p.m.
KMOL	Jul 15, 1984 - 8 p.m.
WDTN	Jul 14, 1984 - 2 p.m.
WYTV	Jul 22, 1984 - 2 p.m.
WTOV	Aug 4, 1984 - 11:30 p.m.

*Copyright Office
of the United States*

WASHINGTON, D.C.

THIS IS TO CERTIFY that a careful search in the Cumulative Catalogs of Motion Picture Entries and the Copyright Office indexes and catalogs that include works cataloged from 1912 through 1970 under the names Pathe Exchange, Inc.; Hal E. Roach and Hal Roach Pathecomedy and the titles ATOLL K, BE BIG, THE DANCING MASTERS, HIS DAY OUT, HOTEL HAPPY, JITTERBUGS, LET GEORGE DO IT, LUCKY DOG, NAVY GRAVY, THE RAP, SHIPS HEROES, THE STOLEN JOOLS, and TREE IN A TEST TUBE disclosed no separate registration for motion pictures identified under these names and specific titles.

Our search in the Cumulative Catalogs of Motion Picture Entries and the Copyright Office indexes and catalogs that include works cataloged from 1912 through 1970 under the names Pathe Exchange, Inc.; Hal E. Roach and Hal Roach Pathecomedy and the titles DARKEST AFRICA and LIBERTY disclosed the following separate registrations for motion pictures identified under these names and specific titles:

DARKEST AFRICA. 1925. Paul Terry, author. Registered in the name of Pathe Exchange, Inc., under Mu 3016 following the deposit of title, description & 20 prints May 4, 1925. No renewal found.

LIBERTY; by Metro-Goldwyn-Mayer Distributing Corporation. 2 reels. Registered in the name of Metro-Goldwyn-Mayer Distributing Corporation, under L 57 following publication January 28, 1929. Renewed under R 176885, September 13, 1956, by Hal Roach Studios, as proprietor of copyright in a work made for hire.

Facts of registration for the works registered under L 19586 of 1923 and L 22207 of 1925 are as follows:

ROUGHEST AFRICA; by Hal E. Roach. Registered in the name of Pathe Exchange, Inc., under L 19586 following the deposit of 40 prints November 9, 1923. No renewal found.

SHOULD SAILORS MARRY? By Hal E. Roach. Registered in the name of Pathe Exchange, Inc., under L 22207 following the deposit of 40 prints December 30, 1925. No renewal found.

Facts of registration for the work entitled ALONG CAME AUNTIE registered under Lu 22966 of 1926 and 14 other motion pictures are as follows:

ALONG CAME AUNTIE. Hal E. Roach, author. 1926. Registered in the name of Pathe Exchange, Inc., under Lu 22966 following the deposit of title, description & 40 prints July 26, 1926. No renewal found.

BE YOUR AGE. Hal E. Roach, author. (Hal Roach Pathecomedy). 1926. Registered in the name of Pathe Exchange, Inc., under Lu 23255 following the deposit of title, description & 36 prints October 26, 1926. No renewal found.

BROMO AND JULIET. Hal E. Roach, author. 1926. Registered in the name of Pathe Exchange, Inc., Lu 22978 following the deposit of title, description & 40 prints July 26, 1926. No renewal found.

COLLARS AND CUFFS. Hal E. Roach, author. 1923. Registered in the name of Pathe Exchange, Inc., under Lu 18958 following the deposit of title, description & 20 prints May 12, 1923. No renewal found.

CRAZY LIKE A FOX. Hal E. Roach, author. 1926. Registered in the name of Pathe Exchange, Inc., under Lu 22969 following the deposit of title, description & 38 prints July 26, 1926. No renewal found.

ISN'T LIFE TERRIBLE? Hal E. Roach,
author. 1925. Registered in the
name of Pathe Exchange, Inc., under
Lu 21506 following the deposit of
title, description & 40 prints
May 29, 1925. No renewal found.

LONG FLIV THE KING. Hal E. Roach,
author. 1926. Registered in the
name of Pathe Exchange, Inc., under
Lu 22731 following the deposit of
title, description & 37 prints
May 17, 1926. No renewal found.

THE NOON WHISTLE. Hal E. Roach,
author. (Hal Roach Comedy). 1923.
Registered in the name of Pathe
Exchange, Inc., under Lu 18910
following the deposit of title,
description & 20 prints April 27,
1923. No renewal found.

ORANGES AND LEMONS. Hal E. Roach,
author. 1923. Registered in the
name of Pathe Exchange, Inc., under
Lu 19060 following the deposit of
title, description & 20 prints
June 7, 1923. No renewal found.

RUPERT OF HEE-HAW. Hal E. Roach,
author. 1924. Registered in the
name of Pathe Exchange, Inc., under
Lu 20188 following the deposit of
title, description & 38 prints
May 12, 1924. No renewal found.

SAVE THE SHIP. Hal E. Roach, author.
1923. Registered in the name of
Pathe Exchange, Inc., under Lu 19584
following the deposit of title,
description & 16 prints November 9,
1923. No renewal found.

SHORT KILTS. Hal E. Roach, author.
1924. Registered in the name of
Pathe Exchange, Inc., under Lu 20457
following the deposit of title,
description & 40 prints August 2,
1924. No renewal found.

UNDER TWO JAGS. Hal E. Roach,
author. (Hal Roach Comedy). 1923.
1 reel. Registered in the name of
Pathe Exchange, Inc., under Lu 19046
following the deposit of title,
description & 20 prints June 6, 1923.
No renewal found.

WHITE WINGS. Hal E. Roach, author.
1923. Registered in the name of
Pathe Exchange, Inc., under Lu 18911
following the deposit of title,
description & 20 prints April 27,
1923. No renewal found.

IN WITNESS WHEREOF the seal of the
Copyright Office has been affixed
hereto on March 6, 1986.

Ralph Oman
Register of Copyrights

James C. Roberts
By: James C. Roberts
Head
Reference & Bibliography Section

LIBRARY OF CONGRESS

*Copyright Office
of the United States*

WASHINGTON, D.C.

THIS IS TO CERTIFY that a careful search in the appropriate Copyright Office indexes and catalogs and the Cumulative Catalog of Motion Picture Entries from 1912 through 1969 under the titles TARZAN AND THE GREEN GODDESS, TARZAN THE FEARLESS and TARZAN'S NEW ADVENTURE disclosed no separate registration for motion pictures identified under these specific titles.

Search in the Cumulative Catalog of Motion Picture Entries and the appropriate Copyright Office indexes and catalogs that include works cataloged from 1912 through October 31, 1986 under the titles ANGEL AND THE BADMAN, THE APE, THE FALLEN IDOL, HIS GIRL FRIDAY, MADE FOR EACH OTHER, MEET JOHN DOE, MY MAN GODFREY, THE STRANGER and TERROR BY NIGHT disclosed the following separate registrations for motion pictures identified under these specific titles:

ANGEL AND THE BADMAN.
Republic Productions, Inc., 1946.
100 minutes, sound, black and white,
35mm. Registered in the name of
Republic Pictures Corp., under
Lp 840 following publication
December 26, 1946. No renewal
found.

THE APE. Monogram Pictures Corp., 1940. 7 reels, sound. Suggested from the play by Adam Hull Shirk. Registered in the name of Monogram Pictures Corp., under Lp 9964 following publication September 24, 1940. No renewal found.

THE FALLEN IDOL. London Films Productions, Ltd., 1948. Released in the U. S. through Selznick Releasing Organization, 1949. Presented by David O. Selznick and Alexander Korda. 94 minutes, sound, black and white, 35mm. Based on a story by Graham Greene. Registered in the name of Vanguard Films, Inc., under Lp 2441 following publication September 29, 1948. No renewal found.

HIS GIRL FRIDAY. Columbia Pictures Corp., 1939. 10 reels, sound. From the play "The Front Page" by Ben Hecht and Charles MacArthur, as produced by Jed Harris. Registered in the name of Columbia Pictures Corp., under Lp 9305 following publication December 30, 1939. No renewal found.

MADE FOR EACH OTHER. Released by United Artists. 1939. 10 reels, sound. Suggested by a story by Rose Franken. Registered in the name of Selznick International Pictures, Inc., under Lp 8663 following publication February 23, 1939. No renewal found.

MEET JOHN DOE. Distributed by Warner Bros. Pictures, Inc., 1941. 14 reels, sound. Based on a story by Richard Connell and Robert Presnell. Appl. author: Robert Riskin. Registered in the name of Frank Capra Productions, Inc., under Lp 10453 following publication May 5, 1941. No renewal found.

MY MAN GODFREY. 1936. 10 reels, sound. Registered in the name of Universal Productions, Inc., under Lp 6572 following publication August 27, 1936. No renewal found.

THE STRANGER. Released through RKO Radio Pictures, Inc., 1946. Presented by International Pictures, Inc., 95 minutes, sound, 35mm. Registered in the name of The Haig Corp., under Lp 409 following publication June 27, 1946. No renewal found.

TERROR BY NIGHT. Universal Pictures Co., Inc., 1946. 6 reels, sound. Adapted from a story by Sir Arthur Conan Doyle. Registered in the name of Universal Pictures Co., Inc., under Lp 182 following publication February 8, 1946. No renewal found.

IN WITNESS WHEREOF, the seal of the Copyright Office has been affixed hereto on November 13, 1986.

Ralph Oman
Register of Copyrights

James C. Roberts
By: James C. Roberts
Head
Reference and Bibliography Section